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BEFORE THE INTEGRATED WASTE MANAGEMENT BOARD

OF THE STATE OF CALIFORNIA

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In the Matter of the Appeal of	)	
James P. Filbin,	)	
	)	
Petitioner,	)	NOTICE AND ORDER NO.
	)	EA-2005-05
From the Notice and Order of	)	
California Integrated Waste	)	
Management Board,	)	
	)	
Respondent.	)	
_____	)	

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, APRIL 5, 2006

1:30 P.M.

AT THE

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

JOE SERNA, JR., CALEPA BUILDING

1001 I STREET

2ND FLOOR

SIERRA HEARING ROOM

SACRAMENTO, CALIFORNIA

--o0o--

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

HEARING PANEL

Ms. Margo Brown, Chairperson

Ms. Rosalie Mul

Ms. Cheryl Peace

FOR THE PETITIONER:

Wiley Ramey, Attorney at Law  
9520 Castillo Drive  
San Simeon, CA 93452

FOR THE RESPONDENT:

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD  
By: Michael Bledsoe, Senior Staff Counsel  
1001 I Street  
Sacramento, CA 95812

ALSO PRESENT

Mr. James Filbin, Petitioner

Mr. Jeff Hackett, CIWMB Staff

Ms. Sue Kumpulainen, Secretary

Mr. Howard Levenson, Deputy Director, CIWMB Permitting &  
Enforcement Division

Mr. Steve Levine, CIWMB Staff Counsel

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1 PROCEEDINGS

2 CHAIRPERSON BROWN: Good afternoon. Thank you.

3 Could we call the roll, Sue, and then I will  
4 start.

5 SECRETARY KUMPULAINIEN: Member Mulé?

6 PANEL MEMBER MULÉ: Here.

7 SECRETARY KUMPULAINIEN: Peace?

8 PANEL MEMBER PEACE: Here.

9 SECRETARY KUMPULAINIEN: Chair Brown?

10 CHAIRPERSON BROWN: Present.

11 Thank you.

12 We are now going to hold a public hearing on the  
13 appeal of Jim Filbin Aggregates of a Notice and Order  
14 issued by the California Integrated Waste Management  
15 Board, acting as the enforcement agency for San Luis  
16 Obispo County.

17 This hearing will be a little more structured than  
18 our typical agenda item hearings. The process we will  
19 follow is laid out in our hearing procedures, which are  
20 attached to the supplemental hearing brief of Respondent  
21 CIWMB as part of Exhibit B, which I will summarize  
22 briefly.

23 Preliminarily, we will elect a chair and possibly  
24 a vice chair for the panel.

25 Therefore, I'm going to ask everyone that plans to

1     testify in this hearing to rise and be sworn in by the  
2     court reporter, as a group.

3             Do we want to do that now?

4             We'll do it at the end.

5             After that, Mr. Filbin will make an opening  
6     statement to the hearing panel followed by an opening  
7     statement of the enforcement agency. These statements  
8     should not exceed five minutes in length.

9             Mr. Filbin may then present his case-in-chief to  
10    the hearing panel, not to exceed 30 minutes in length,  
11    exclusive of time devoted to responding to questions from  
12    the hearing panel members.

13            During his presentation, Mr. Filbin may call any  
14    witnesses to provide relevant testimony on the matter  
15    before the hearing panel, and such witnesses questioning  
16    should not exceed 20 minutes, exclusive of the hearing  
17    panel questions.

18            The enforcement agency will then have an  
19    opportunity to both rebut Mr. Filbin's presentation and  
20    present its case-in-chief, which, in total, should not  
21    exceed 45 minutes, exclusive of hearing panel questions.

22            During his presentation, Mr. Filbin may call any  
23    witnesses and under the same time parameters as during --  
24    During this presentation, the enforcement agency -- excuse  
25    me -- may call any witness under the same time parameters

1 as Mr. Filbin. The parties will not be permitted to  
2 cross-examine any witness or other participants in the  
3 hearing.

4 Then have the opportunity to both rebut -- Mr.  
5 Filbin will then have the opportunity to both rebut the  
6 enforcement agency's presentation, which should not exceed  
7 15 minutes, exclusive of hearing panel questions.

8 Finally, the enforcement agency and, thereafter,  
9 Mr. Filbin may make closing statements which should not  
10 exceed five minutes each, exclusive of hearing panel  
11 questions.

12 After the presentations are completed, the Board  
13 will conclude the public portion of the hearing and go  
14 into closed session to deliberate on a decision, which  
15 will thereafter be issued in writing and served upon all  
16 parties via facsimile and U.S. mail.

17 Unless any panel members have any questions, I  
18 would like to entertain a motion for the election of a  
19 chair.

20 PANEL MEMBER MULÉ: I move that Board Chair Brown  
21 be elected as our hearing panel chair.

22 PANEL MEMBER PEACE: Second.

23 CHAIRPERSON BROWN: It's been moved by Panel  
24 Member Mulé and seconded by Member Peace.

25 Sue, could you call the roll, please.

1 SECRETARY KUMPULAINIEN: Member Mulé?

2 PANEL MEMBER MULÉ: Aye.

3 SECRETARY KUMPULAINIEN: Member Peace?

4 PANEL MEMBER PEACE: Aye.

5 CHAIRPERSON BROWN: Thank you.

6 I would now like to ask everyone that plans to  
7 testify to stand so that they may be sworn in.

8 (Thereupon the witnesses were sworn, by the  
9 court reporter, to tell the truth and  
10 nothing but the truth.)

11 CHAIRPERSON BROWN: Now we will proceed.

12 Mr. Levenson, did you have a statement that you  
13 would like to start with, before we proceed with  
14 Mr. Filbin?

15 DEPUTY DIRECTOR LEVENSON: Thank you, Madam Chair.

16 For the record, Howard Levenson. I am the Deputy  
17 Director for Permitting and Enforcement at the Integrated  
18 Waste Management Board.

19 I would like to make a couple of introductory  
20 remarks.

21 First of all, this is the first appeal hearing  
22 under AB, Assembly Bill, 59 in which the Board itself is  
23 acting as Enforcement Agency.

24 AB 59 allows an owner or operator to appeal an  
25 action or decision of the LEA to a hearing panel.

1           In this case, as you have noted, Madam Chair, the  
2   Board itself is acting as the enforcement agency. And in  
3   accordance with the Board resolution adopted in 1996,  
4   regarding these procedures, Board Chair Brown has selected  
5   Board Members Mulé and Peace, along with herself, to serve  
6   as the hearing panel for this appeal.

7           As you noted, you will be hearing Mr. Jim Filbin's  
8   appeal of Notice and Order EA-2005-05, issued by the CIWMB  
9   acting as the enforcement agency for San Luis Obispo  
10   County.

11          I would like to give you a brief background on our  
12   role in serving as the enforcement agency in San Luis  
13   Obispo County.

14          We do serve as the enforcement agency for the  
15   County on the basis to have a memorandum of understanding  
16   signed with the County in July of 2004. Our role as  
17   enforcement agency is the same as that of any local  
18   enforcement agency, and that is to ensure that all solid  
19   waste handling is properly permitted to inspect solid  
20   waste operations and facilities, to ensure that no illegal  
21   solid waste handling is taking place, and to take  
22   appropriate enforcement action.

23          As enforcement agency, we take enforcement action  
24   when warranted, activities within our jurisdiction and  
25   pursuant to our own regulations. This includes issuing



1 Notice and Orders as one typical course of action.

2 Normally, owners and operators comply with these  
3 enforcement orders and have not appealed them.

4 Now, in the course of carrying out our duties in  
5 San Luis Obispo County, enforcement agency staff inspected  
6 Jim Filbin aggregates and determined that the facility was  
7 operating as a solid waste facility without a solid waste  
8 facilities permit.

9 Acting as the enforcement agency, we issued this  
10 Notice and Order on September 30th, 2005, requiring that  
11 Mr. Filbin immediately cease and desist acceptance of type  
12 A inert debris and begin processing the existing  
13 stockpiles of type A inert debris for resale or reuse by  
14 November 15, 2005.

15 On November 3rd, 2005, we received a letter dated  
16 October 31st, 2005, from Mr. Filbin, appealing this Notice  
17 and Order.

18 The appeal hearing was originally scheduled for  
19 December 5, 2005, but Mr. Filbin requested a 90-day  
20 extension due to health issues.

21 Through prior Chair Marin, the hearing panel did  
22 grant a 30-day continuance.

23 On January 5th, 2006, we received another request  
24 for extension, again due to Mr. Filbin's health problems.  
25 The extension was granted in this case because Mr. Filbin

1   agreed to waive the stay on the enforcement order and  
2   begin processing material within 15 days, and he also  
3   agreed to grant access to CIWMB staff to conduct  
4   inspections to track compliance.

5           Mr. Jeff Hackett of the enforcement agency section  
6   will present more details later on in the staff  
7   presentation, but the EA program's position here, in  
8   summary, is that the panel should uphold this Notice and  
9   Order in its entirety.

10           And with that, I will stop and turn it back to  
11   you.

12           CHAIRPERSON BROWN: Thank you very much, Mr.  
13   Levenson.

14           We will now proceed to the opening statement by  
15   Petitioner Mr. Jim Filbin.

16           MR. RAMEY: I'm Mr. Filbin's attorney, Wiley  
17   Ramey. He's going to be testifying. I'm not going to  
18   testify, but I'm going to make the opening statement.

19           CHAIRPERSON BROWN: That's fine, Mr. Ramey.  
20           Could state your name and position for the record.

21           MR. RAMEY: Wiley Ramey appearing for the  
22   petitioner, from San Luis Obispo.

23           I don't disagree with the procedural background  
24   except that we disagree that anything other than the  
25   waiver of the stay with respect to receiving material was

1     agreed to in January.

2             In other words, I agreed that the agency or the  
3     State could enforce that provision, if they chose to. And  
4     we don't agree that Mr. Filbin has not been processing  
5     materials. It's probably the reason why we're here.

6             Mr. Filbin will testify in a minute.

7             Yes, he does have health problems. He had a heart  
8     attack in October of last year.

9             And I personally feel that this hearing should be  
10    postponed based on that alone, but I will come back to  
11    that in a minute. We are here.

12            He's been the owner and, well, the owner of the  
13    property on Santa Fe Road since December of 1978.

14            When acquired, the property was industrially  
15    zoned, and under the definitions of industrial use in San  
16    Luis Obispo County in 1978, my position is that no minor  
17    use permit or other use permit was required for his type  
18    of operation, which I previously categorized as a de facto  
19    recycling center.

20            I have a number of photographs with me today,  
21    approximately 17 of them, which I contend, demonstrate  
22    processing in the sense that the materials are divided  
23    into 10 or 11 subcategories. As I understand it, 9 of  
24    those are not affected by your order. We're only talking  
25    about concrete and asphalt.

1           He can describe the content of these photographs,  
2   which I have given an extra copy to Mr. Bledsoe.

3           I also have with me a series of photographs  
4   demonstrating the type of crushing, which is another type  
5   of processing that he engages in with a bulldozer.

6           There are three points that I want to make.

7           Number one, his health is a substantial factor  
8   preventing him from processing at a more rapid rate than  
9   he normally would be at this time.

10          Number two, he is processing in the sense that the  
11   materials are divided, upon arrival, into a salable form.  
12   And that will be demonstrated by photographs.

13          Number three, the operations are grandfathered in  
14   the sense that they have been ongoing since December of  
15   1978.

16          Now, he has never been lawfully restrained by the  
17   County of San Luis Obispo for any relevant activity, here  
18   today. So we have a continuous operation that's 28  
19   years -- almost 28 years old.

20          I have asked for some copies to be made of the --  
21   of two letters from the County of San Luis Obispo  
22   indicating that his particular property is currently the  
23   subject of an acquisition process, the status of which is  
24   totally unclear, but which apparently was suspended at  
25   about the time your agency took over this enforcement

1 action in July of 2004.

2 And therefore, we have the odd situation of, on  
3 the one hand, the State acting as enforcement agency for  
4 the county, seeking to shut down his business operations,  
5 which involve large amounts of material which would be  
6 used on runway expansion while the County proceeds with a  
7 runway expansion less than 300 yards away from the  
8 property.

9 I want to make two preliminary motions.

10 One, a preliminary injunction has been granted by  
11 the San Luis Obispo Superior Court, so therefore, there's  
12 no legal reason why this hearing can't be postponed while  
13 I develop additional discovery or additional facts in the  
14 form of discovery in the case pending in San Luis Obispo  
15 County, designed to show that the acquisition of this  
16 property was temporarily stayed in order to coordinate  
17 with your agency.

18 In other words, while you shut down the business  
19 and devalue the property, the County will then acquire the  
20 property at a fraction of its value.

21 Since you squashed my subpoenas designed to show  
22 that, my first motion is to dismiss this entire proceeding  
23 on the grounds of due process.

24 SENIOR STAFF COUNSEL BLEDSOE: Madam Chair, the  
25 enforcement agency would oppose that motion. There's no

1 basis that's been stated for dismissing the action on the  
2 part of the petitioner.

3 MR. RAMEY: I just stated what the basis is. I  
4 have two documents which I want to have marked as 1 and  
5 2 -- they are being copied at this moment -- demonstrating  
6 two letters from the County, indicating that he is in a  
7 pipeline to be acquired by the County.

8 And so therefore, I request that additional time  
9 be granted to him, in addition to which -- I think you  
10 have a copy of the letter from his doctor showing that he  
11 needed 90 days to recuperate, although the 90 days is over  
12 with. You know, he's still not really healthy. He's a  
13 one-man operation.

14 For that reason I move to postpone these  
15 proceeding for another 90 days as well.

16 SENIOR STAFF COUNSEL BLEDSOE: A question, please,  
17 Madam Chair.

18 Is the motion to dismiss Mr. Filbin's appeal or to  
19 continue this hearing?

20 MR. RAMEY: I move to dismiss the entire  
21 proceeding. And if that's denied, I move to continue the  
22 hearing.

23 SENIOR STAFF COUNSEL BLEDSOE: Madam Chair, if the  
24 appeal is dismissed, then the objection, the petitioner's  
25 objection to the Notice and Order disappears. So if

1 Mr. Filbin, in fact, wants to dismiss his appeal, the  
2 enforcement agency has no objection to that.

3 MR. RAMEY: I'm sorry. I misspoke.

4 When I said to dismiss the entire proceeding, I  
5 meant the underlying order, not my appeal from the order,  
6 obviously.

7 CHAIRPERSON BROWN: There is a clarification, and  
8 then I assume the enforcement agent would object.

9 SENIOR STAFF COUNSEL BLEDSOE: Yes.

10 CHAIRPERSON BROWN: Do we need to vote on the  
11 motion before the hearing panel? Or can we take it under  
12 submission.

13 STAFF COUNSEL LEVINE: On this particular motion,  
14 it would probably be best to vote. If you like, you could  
15 deliberate in closed session or see if you have a  
16 determination now.

17 SENIOR STAFF COUNSEL BLEDSOE: Madam Chair.

18 CHAIRPERSON BROWN: We are taking -- We are under  
19 consideration for a motion to dismiss the Notice and  
20 Order; am I correct?

21 SENIOR STAFF COUNSEL BLEDSOE: That's correct.

22 CHAIRPERSON BROWN: I would like to adjourn the  
23 hearing panel into closed session for five minutes, and we  
24 will reconvene in five minutes.

25 (Thereupon the panel recessed into closed

1 session.)

2 CHAIRPERSON BROWN: We will reconvene the session.

3 We need to call the roll again.

4 SECRETARY KUMPULAINIEN: Member Mulé?

5 PANEL MEMBER MULÉ: Here.

6 SECRETARY KUMPULAINIEN: Member Peace?

7 PANEL MEMBER PEACE: Here.

8 SECRETARY KUMPULAINIEN: Chair Brown?

9 CHAIRPERSON BROWN: Here.

10 We will now vote on the motion to dismiss.

11 Sue, can you call the roll?

12 SECRETARY KUMPULAINIEN: Member Mulé?

13 PANEL MEMBER MULÉ: No.

14 SECRETARY KUMPULAINIEN: Member Peace?

15 PANEL MEMBER PEACE: No.

16 SECRETARY KUMPULAINIEN: Chair Brown?

17 CHAIRPERSON BROWN: No.

18 Mr. Ramey, did you want to put another motion on

19 the floor?

20 MR. RAMEY: I have another motion to continue this

21 hearing 90 days for reasons of health and for reasons of

22 discovery.

23 STAFF COUNSEL LEVINE: Madam Chair, if I may.

24 Steven Levine, counsel for the hearing.

25 CHAIRPERSON BROWN: Thank you, Mr. Levine. Would



1     you like to respond?

2                 STAFF COUNSEL LEVINE:   Yes, if I may.

3                 Procedurally, where we are at, at this juncture,  
4     as alluded to by Mr. Levenson, is that this is an appeal  
5     of the Notice and Order which generally does not stay the  
6     activities of material coming in but did stay, initially,  
7     the activities required in the order of processing and did  
8     stay the activities of thereafter removing the materials.

9                 A 30-day continuance was granted, subject to those  
10    stays.

11                An additional 90-day continuance was then  
12    requested by Petitioner Jim Filbin Aggregates, and the  
13    response was a conditional granting of that request,  
14    subject to certain conditions.

15                And I do have before me, already in the record, as  
16    part of the supplemental hearing brief of the Respondent,  
17    Board, as EA, and it is Exhibit B to that document, a  
18    letter -- part of Exhibit B -- a letter dated January 5th,  
19    2006, from the Board, actually me, as the hearing counsel,  
20    to Mr. Ramey, cosigned by Mr. Ramey, in the agreed to and  
21    accepted by section.

22                In that letter it states as follows, and I quote,  
23    "This further confirms our telephone conversation and your  
24    subsequent message to me wherein you requested that the  
25    interim chair of the hearing panel, Rosario Marin, grant a

1 further 90-day continuance of this matter and that in  
2 consideration for such continuance, your client has now  
3 agreed to the conditions set forth in Ms. Marin's letter  
4 of December 1st, 2005, to wit" -- and a subquote here --  
5 "'A, a lift of the stay on the subject order, which under  
6 the timeframe specified in the order would require him,'"   
7 i.e. Mr. Filbin, "'to begin processing material within 45  
8 days of the lift of the stay, complete processing within  
9 90 days, thereafter, and comply with other requirements,  
10 as specified therein, and B, grant access to conduct  
11 inspections by the EA, to track compliance with the  
12 processing schedule,'" closed quote.

13 Based on this agreement with the petitioner, at  
14 this juncture, there is no stay on any aspect of the  
15 order, and to that extent there are really two avenues the  
16 petitioner may pursue.

17 He could proceed with this hearing, either now or  
18 at a later time, subject to the determination of this  
19 Board, of the motion, or since at this juncture the  
20 enforcement agency has the ability to enforce any  
21 violations, if any, of the order, including the  
22 processing, and, if it's timely, the removal. At any  
23 juncture, the enforcement agency now has the discretion to  
24 bring a hearing for penalties or other relief, based upon  
25 any potential violations of the order.

1           And what I want to assure the petitioner is that  
2   if it does not proceed today and if instead it's before a  
3   tribunal again, on a potential penalty hearing or other  
4   type of hearing, any of the defenses, any of the  
5   challenges that it wanted to make today to the order could  
6   also be a part of that penalty hearing.

7           The only consequence, of course, is that at that  
8   juncture, if you do not prevail under challenges, there is  
9   the potential for remedies for violations of the order.

10          So basically, you have a choice of either  
11   proceeding now, before there are any violations after this  
12   date with the hearing, seeking this continuance, but that  
13   will not preclude the enforcement agency in that interim  
14   period from coming with their own hearing.

15          And so I just wanted to make that clear for the  
16   panel and for the parties here, that this continuance  
17   request is independent of the EA's ability to prosecute.

18          CHAIRPERSON BROWN: Thank you, Mr. Levine.

19          Mr. Ramey.

20          MR. RAMEY: I think you made that -- I think you  
21   explained that to me once before. I thank you for  
22   re-explaining it. I understand that. I understand that  
23   we agreed that the stay would be lifted with respect to  
24   those portions of the order that have been stayed. But at  
25   the same time, you know, we don't agree that he's not

1 processing material, number one.

2 And number two, he's not in real good health and  
3 we have this issue of the County acquiring the property.

4 And the timing of this whole thing just smells --  
5 pardon my use of the word "smell." But I don't feel very  
6 comfortable with the situation at all. Maybe I'm the only  
7 person in this room other than Mr. Filbin who feels this  
8 way. I hope not.

9 Anyway, I make a motion to continue this hearing  
10 in 90 days. They do have a preliminary injunction, so  
11 legally, he's prohibited from receiving inert debris,  
12 quote, unquote, type A.

13 CHAIRPERSON BROWN: Mr. Bledsoe, as the EA, would  
14 you like to respond?

15 SENIOR STAFF COUNSEL BLEDSOE: Thank you. Yes.

16 Madam Chair, the enforcement agency opposes a  
17 further continuance of this hearing.

18 This matter was originally scheduled for  
19 December 5th, last year. Petitioner Filbin has had  
20 four-plus months to conduct whatever discovery he wanted  
21 to conduct. If there were any evidence to be had, he  
22 could have obtained it by now.

23 We strongly oppose any further continuance. We  
24 would like to get this matter resolved and moved forward.

25 CHAIRPERSON BROWN: Thank you, Mr. Bledsoe.

1           We would like to vote on the motion before the  
2 Board, which is the continuance of this hearing.

3           Did you want to stipulate a time frame or just a  
4 continuance indefinitely?

5           MR. RAMEY: I will ask it for 90 days.

6           SENIOR STAFF COUNSEL BLEDSOE: 90 days is what he  
7 said.

8           CHAIRPERSON BROWN: For a 90-day continuance.

9           Can you call the roll, please.

10          SECRETARY KUMPULAINIEN: Member Mulé?

11          PANEL MEMBER MULÉ: Aye.

12          SECRETARY KUMPULAINIEN: Member Peace?

13          PANEL MEMBER PEACE: No.

14          SECRETARY KUMPULAINIEN: Chair Brown?

15          CHAIRPERSON BROWN: No.

16          We would like to proceed with the matter before  
17 the Board today.

18          MR. RAMEY: All right. Let's see now.

19          I had marked -- or I would like to mark the two  
20 letters from the County and the County Master Plan as  
21 Exhibits 1, 2, and 3 for the record.

22          SENIOR STAFF COUNSEL BLEDSOE: Madam Chair, I  
23 don't believe we received a copy of the Master Plan.

24          Is that it?

25          MR. RAMEY: Well, it probably wasn't legible when

1 it was faxed to you. It's a shiny brochure.

2 The Filbin property is marked in yellow ink.

3 SENIOR STAFF COUNSEL BLEDSOE: Madam Chair, just  
4 for the sake of clarity, I'm not quite sure which order he  
5 wanted these documents marked in.

6 Could you identify them by date.

7 MR. RAMEY: The first one would be a letter of  
8 February 26, 2004, from Caryn Maddalena.

9 The second would be a letter from January 13th  
10 from Caryn Maddalena, and the third one would be the  
11 Master Plan.

12 SENIOR STAFF COUNSEL BLEDSOE: Thank you.

13 CHAIRPERSON BROWN: We don't have copies of the  
14 Master Plan. The hearing panel does not have a copy.

15 MR. RAMEY: I would like to hand my brief to the  
16 panel as well.

17 CHAIRPERSON BROWN: Mr. Ramey, we do have that, so  
18 I will let you keep that one. We have a copy.

19 SENIOR STAFF COUNSEL BLEDSOE: Madam Chair, excuse  
20 me.

21 Would you please glance at the brief or ask Mr.  
22 Levine, does that include the copies of the land use  
23 ordinances that were cited in the brief?

24 CHAIRPERSON BROWN: I think so.

25 STAFF COUNSEL LEVINE: The actual photocopies of

1 ordinances are not attached to the brief handed by Mr.  
2 Ramey.

3 SENIOR STAFF COUNSEL BLEDSOE: Thank you.

4 MR. RAMEY: I think that I will -- So the three  
5 areas that we are going to cover are the type of  
6 processing that he actually engages in, the length of time  
7 he's been there, and his health.

8 And after we present that testimony, I will  
9 present brief argument that as a result of that testimony,  
10 Mr. Filbin's property is not a solid waste storage  
11 facility. It's a de facto recycling center.

12 CHAIRPERSON BROWN: Thank you.

13 Do we have an opening statement by the staff, Mr.  
14 Bledsoe?

15 SENIOR STAFF COUNSEL BLEDSOE: Madam Chair,  
16 Michael Bledsoe on behalf of the enforcement agency.

17 In his appeal, Mr. Filbin raises three issues:  
18 That the material is being processed within six months  
19 from receipt; that the storage of material is not what is  
20 occurring at the site; and that the activities at the site  
21 are protected by, quote, "grandfathering," closed quote,  
22 since 1979.

23 In his brief, a portion of which was submitted to  
24 us by fax yesterday, Petitioner Filbin raises additional  
25 arguments having to do with the enforcement agency

1   apparently trying to take his property without due process  
2   of law or somehow attempting to lower the value of his  
3   property, which the County may, in the future, acquire.

4           The legal and factual issues before the panel  
5   today essentially are whether the activities at Jim Filbin  
6   Aggregates are subject to regulation under the Integrated  
7   Waste Management Act or is Jim Filbin Aggregates exempt  
8   due to Mr. Filbin having some vested right to store  
9   materials there, on a permanent basis or semi-permanent  
10   basis, or dispose materials there, or whether his  
11   activities are somehow exempt from our regulations.

12           The series of short questions you will need to  
13   answer are, Is there type A inert debris on the site? Has  
14   that material been stored, unprocessed, for more than six  
15   months?

16           If you decide that it has been stored for more  
17   than -- pardon me. If you decide that it has been  
18   processed, has it been stored for more than 18 months?  
19   And if your answer to those is, "yes," then a solid waste  
20   facilities permit is required under our regulations, a  
21   registration permit is required for type A inert debris  
22   disposal facility.

23           Very briefly, the applicable laws here, source  
24   separated concrete and asphalt rubble are type A inert  
25   debris.



1           Type A inert debris has been disposed when it has  
2   been stored at a facility without having been processed  
3   for more than six months, or when it has been processed  
4   and stored for more than 18 months.

5           Storage, the word "storage" is defined to mean the  
6   holding or stockpiling of processed or unprocessed inert  
7   debris for a temporary period at the end of which the  
8   material is either recycled or transferred elsewhere.

9           Storage of inert debris for periods exceeding the  
10   limits set in this article is deemed to be disposal and  
11   shall be regulated as set forth in our regulations  
12   governing solid waste disposal sites.

13           "Processing" is defined in the Construction and  
14   Demolition and Inert Debris Regulations as "the controlled  
15   separation, recovery, volume reduction, or recycling of  
16   solid waste, including organized, manual, automated, or  
17   mechanical sorting, chipping, grinding, shredding, or  
18   bailing, the use of vehicles for spreading waste for the  
19   purposes of recovery, the use of recovery belts, sorting  
20   lines, or volume reduction equipment."

21           A facility that disposes type A inert debris must  
22   obtain a solid waste facilities permit. And upon an order  
23   from the enforcement agency, a person who is operating a  
24   solid waste facility without a solid waste facilities  
25   permit must cease and desist those activities.

1           The evidence that you have received in the form of  
2   declarations and documents in the briefs submitted in this  
3   matter and the evidence that you will hear today, in the  
4   form of testimony, will show that Jim Filbin at Jim Filbin  
5   Aggregates is operating an type A inert debris disposal  
6   facility without a solid waste facilities permit in  
7   violation of Integrated Waste Management Act.

8           The key facts that we will establish are that  
9   substantial quantities of type A inert debris are stored  
10  at the facility, approximately 80,000 cubic yards.

11          That material has not been processed for reuse or  
12  resale. That material has been on the site for  
13  substantially more than six months. And if you decide  
14  that the material has, in fact, been processed, it has  
15  been stored on the site for substantially more than 18  
16  months.

17          We do not believe that Petitioner Filbin will be  
18  able to introduce any credible facts or valid points or  
19  law that will support his appeal.

20          There is no evidence whatsoever on the part of the  
21  Waste Board or the enforcement agency to have any effect  
22  on the value of Mr. Filbin's property. And there's no  
23  authority to support Mr. Filbin's argument that somehow he  
24  has a vested right to continue this illegal activity.

25          Accordingly, we believe that you will have to

1 conclude that type A inert debris has been disposed at the  
2 facility without the necessary permit and that the site is  
3 an illegal disposal facility.

4 Thank you.

5 CHAIRPERSON BROWN: Thank you, Mr. Bledsoe.

6 Questions?

7 PANEL MEMBER PEACE: Just ask one question about  
8 processing.

9 Do we have a definition for that? And does  
10 Mr. Filbin understand what processing means?

11 Because according to what he said, he believes he  
12 is processing the material, because he crushed it with his  
13 bulldozer.

14 What is our definition of "processing"?

15 SENIOR STAFF COUNSEL BLEDSOE: The definition of  
16 processing as set out in Sec. Title 14 of the California  
17 Code of Regulations, Section 17381V, as in Victor -- and I  
18 I'm paraphrasing here -- is the controlled separation  
19 recovery, volume reduction, or recycling of solid waste,  
20 including, without limitation, organized, manual,  
21 automated, or mechanical sorting or chipping or grinding,  
22 shredding or bailing, using vehicles to spread waste for  
23 the purposes of recovery, using conveyor belts, sorting  
24 lines, or volume reduction equipment.

25 So the question -- That's our definition in the

1 regulations of "processing."

2 And certainly Mr. Filbin will tell us what he  
3 thinks he's doing and how that fits with that definition.

4 In Mr. Hackett's presentation, he will discuss the  
5 question of processing and whether or not Mr. Filbin is,  
6 in fact, processing his material.

7 PANEL MEMBER PEACE: Thank you.

8 CHAIRPERSON BROWN: Thank you.

9 Any other questions?

10 Okay.

11 We will now proceed to the petitioner's  
12 presentation.

13 MR. RAMEY: Okay. Now, do you have any objection  
14 to Mr. Filbin addressing you, informally?

15 CHAIRPERSON BROWN: Of course not.

16 MR. RAMEY: Do you want me to do question and  
17 answer?

18 CHAIRPERSON BROWN: No, no, no. You can do your  
19 presentation however you so choose.

20 MR. RAMEY: I would like him to address the panel.  
21 And when he's finished, I intend to show him a series of  
22 photographs. And I will also ask him to identify copies  
23 of the land use order that is voluminous, but I have it  
24 here in front of me, dating back to 1978.

25 And then whatever else I think we need to add.

1           So I will give him the floor.

2           MR. FILBIN: Good afternoon, ladies.

3           My name is James Patrick Filbin. I have talked to  
4 staff's representatives in regards to the paperwork that  
5 you brought out to me and mailed to me and all the other  
6 types of things. And you've got part of it addressed to a  
7 Jim Filbin Aggregates. No such entity exists, never did  
8 exist. I've told the staff that; I don't know where they  
9 get it. I get mail that way, send it back.

10          I put a telephone listing in the phone book, years  
11 ago, and I had telephone person put it in, "Jim Filbin  
12 comma, Aggregates. All this mail and everybody else's  
13 mail is upper case, lower case, capital letters, you name  
14 it, no comma, no nothing. There is a difference.

15          I do not do any business as Jim Filbin Aggregates.  
16 My facility, if you wanted to call it a facility, I call  
17 it my enterprise. I bought that property in  
18 December 1978. It was a cow pasture. It has rezoned and  
19 subdivided into industrial parcels. Immediately, in  
20 December of '78, upon closing of escrow, we acquired  
21 permission from the neighbor to move some dirt off of  
22 the -- his field, which is adjacent to the road, onto our  
23 field, so we could have a driveway. And since then, we  
24 have been bringing in materials to improve the property.  
25 That's December of '78.

1           We have never had a valid objection by the County  
2   of San Luis Obispo. We have brought in materials, helped  
3   the city sewer farm get rid of the excess soil, placed  
4   12,000 yards on the neighbor's farm field, placed another  
5   6,000 on another neighbor's adjacent farm field, put some  
6   on my field, to improve the drainage so the drainage is as  
7   it was when I acquired the property. The water comes in  
8   on the northeasterly side, goes through the appropriate  
9   proximate drainage swail that was there, and goes out on  
10  the south westerly side in the same area.

11           I have a registered civil engineer's report,  
12  showing that the drainage does that. He and I went out in  
13  one of the lulls in one of our recent heavy rainstorms  
14  when the whole country was running downhill, and I  
15  specifically asked him to note the flow of the water, how  
16  it was controlled, where it was draining to, where it came  
17  in at, where it went out. And he gave me that report. I  
18  don't have the report with me today, but you, you know,  
19  can come out in these rainstorms we've been having and  
20  observe that, if you like, or the staff could.

21           The enterprise that I have been running there,  
22  these years, for my family and myself, has been to improve  
23  a piece of property, which was a total failure in its  
24  history as being a farming enterprise. It was a  
25  supposedly dairy way back when the Zanolli family had it.

1 They didn't make a go of it. A couple neighbors tried to  
2 farm crops on it, tried to raise tomatoes on it. That  
3 didn't work. Tried to raise grain crops on it. That  
4 didn't work. Tried to raise sugar peas on it. That  
5 didn't work. None of those crops would even pay for the  
6 cost of preparing the land and planting. And there wasn't  
7 much to harvest. The tomato crop was the one that did  
8 that, and the farmer that did that is one of the  
9 outstanding farmers -- I should say past outstanding  
10 farmers because he died recently -- for over 35 years.  
11 And he raised very choice tomatoes which went to the  
12 restaurant trade in San Francisco as one of his main  
13 customers. And he was really excited about getting this  
14 virgin soil to raise his tomatoes. Didn't work. He never  
15 picked a tomato. He grew nice big bushes -- no tomatoes.

16 His wife, in fact, was a Realtor that subdivided  
17 and developed the properties the Zanolli ranch into  
18 industrial lots and we bought one of them. It was locked.  
19 It did have a natural drainage area, which we maintained  
20 and we added material to it and regraded it so it would  
21 continue that. And over the years we have consistently  
22 brought in material, sand, gravel, concrete, asphalt, to  
23 further the enterprise, to make an industrial parcel of  
24 land that you could utilize for higher and better uses.

25 Your staff recently has sent a letter to one of my

1 long-time participating, you could call them customers  
2 except they don't pay anything. It's Union Asphalt. And  
3 the preliminary injunction was granted on the 15th of  
4 March, Union Asphalt shared with me a letter that the  
5 Integrated staff sent to them, certificated, demanding  
6 that they cease the activity of bringing material over to  
7 me. I've been bringing that material in since 1981. The  
8 material, as fitting your description, is what it was, is  
9 except under K1 of the injunction notice. And it's sand  
10 and gravel that the cement trucks have left over when they  
11 go to a job, to unload and the buyer can't take it. So  
12 it's virgin materials. It's never been deposited at a  
13 construction site. They couldn't take it. But here  
14 you've got a cement truck, you can imagine the nice big  
15 round washing machine sitting on the back of a truck with  
16 liquid cement, sand, and gravel in it, that has to be  
17 cleaned out or it sets up like a rock.

18 And so the agreement we've had with those folks,  
19 over all these years, was to dilute this stuff so it's  
20 like soup, so it will not activate and set up and bring it  
21 over to me. Because sand and gravel are precious in our  
22 community; we have none. We have to go to Santa Maria,  
23 35 miles south in Santa Barbara County and import it,  
24 which costs a lot of money. Over \$85 an hour for a truck  
25 to run and they can only make one trip an hour. Or you go



1 north to Santa Margarita towards Atascadero which is over  
2 the Cuesta pass, which is a slow trip, and you bring it  
3 down from, what was Kaiser is now, Hanson enterprises.  
4 They make gravel up there, but they don't really have  
5 sand. So they done me a tremendous favor, all of these  
6 years, in bringing in material that allowed us to base the  
7 shaped subsoil, the substructure -- substructure drain and  
8 then to top that with from 12 inches to 14, in some places  
9 16, 18 inches of concrete truck washout, which is sand and  
10 gravel and diluted water cement.

11 And this material settles and compacts extremely  
12 well and you don't sink in the mud which you have with the  
13 drains. If you didn't have that, I will assure you in the  
14 San Luis little clay adobe-type soil, you are struck.  
15 You're really stuck. You are not going to go anywhere.

16 So the letter that come from your staff to Union  
17 Asphalt is totally out of place. And I'm not sure what  
18 they want to do about that, but that's why we're here  
19 today, to talk to you about what's going on out there.

20 I have been there since 1978 and we have, with  
21 exception of a couple health problems, been consistently  
22 helping my neighbors, helping the contractors, to dispose  
23 of their concrete so we can reuse it, the asphalt, so we  
24 can reuse it, and soil. And then there comes along not  
25 only those friends and neighbors and contractors who want

1 some of this material to use on a project, and we have  
2 exported, sold, delivered, give away thousands of yards to  
3 these people.

4 And reading the documentation that your folks  
5 have, you've got requests for receipt and records and all  
6 that sort of stuff. I don't keep that sort of thing. So  
7 I don't have it. But I guess I could get affidavits from  
8 these folks that yes, the airport brought over -- the  
9 airport brought over a whole bunch of subbase from  
10 underneath one of the runways they were redoing, the  
11 contractor for the airport. And I told him to put it  
12 right there. He did, out on the front of the property,  
13 and it was a great big pile.

14 PANEL MEMBER PEACE: Did you charge them to do  
15 that?

16 MR. FILBIN: Pardon?

17 PANEL MEMBER PEACE: Did you charge the airport  
18 authority to bring it?

19 MR. FILBIN: No.

20 PANEL MEMBER PEACE: So you let them put it there  
21 for no charge.

22 MR. FILBIN: We have to import that if we want to  
23 have it on hand from elsewhere, and they were bringing it  
24 for free. So I'm going bite the hand that provided it.

25 MR. RAMEY: Why don't we go over some of these

1 photographs, because we've only got 30 minutes.

2 MR. FILBIN: Well, let me say a bit more.

3 MR. RAMEY: How much time do we have left?

4 CHAIRPERSON BROWN: Mr. Levine? Approximately?

5 STAFF COUNSEL LEVINE: We're at about 12 minutes  
6 now, but collectively you have 30 minutes for your  
7 presentation and 20 minutes for the witness, which would  
8 give you 50 minutes, and you're about 12 minutes.

9 MR. RAMEY: No problem. Thank you.

10 MR. FILBIN: So the rest of the story, as Paul  
11 Harvey would say, is low and behold, the airport  
12 contractor come back and said, hey, we need some base over  
13 here to make a bigger parking area for the fire trucks.  
14 Do you have some base?

15 I said sure, I happen to have a pile right here.  
16 So they bought that and took it back to the airport.

17 Did you follow my point? We received the base  
18 from the airport. I didn't charge them anything to help  
19 them out, and then they wanted to buy it back.

20 PANEL MEMBER PEACE: So they bought it back and  
21 you sold it, and you don't keep any records on that for  
22 tax purposes?

23 MR. FILBIN: Pardon?

24 PANEL MEMBER PEACE: You don't keep any records on  
25 that for tax purposes or anything?

1 MR. FILBIN: No. They pay for it.

2 CHAIRPERSON BROWN: How do you account for you  
3 business if you don't keep any records?

4 MR. FILBIN: I really don't look at it as a  
5 business.

6 CHAIRPERSON BROWN: How can you not count it as a  
7 business?

8 MR. FILBIN: I look at it as an enterprise.

9 Pardon?

10 CHAIRPERSON BROWN: It's an enterprise doing  
11 business in the County of San Luis Obispo. And you don't  
12 keep any records regarding sale of material?

13 Or let me, without -- since you've already  
14 answered that question, when the staff asked for records  
15 of sale of material that was on your property, if the  
16 County of Santa Barbara or San Luis Obispo -- the San Luis  
17 Obispo airport come and wanted to get some fill and they  
18 paid you for it, why didn't you get them --

19 MR. FILBIN: They didn't pay. The contractor  
20 paid.

21 CHAIRPERSON BROWN: Well, why didn't you get an  
22 affidavit or some documentation from him to show that you  
23 were using -- reusing the material, if it was requested?

24 MR. FILBIN: I think the answer will come here.

25 CHAIRPERSON BROWN: Okay. I'm sorry.

1           MR. FILBIN: I'll give a little more of an  
2 explanation. Good question.

3           CHAIRPERSON BROWN: Okay.

4           MR. FILBIN: The problem which has evolved over  
5 the last few years is I've been in poor health. And last  
6 year I had two strokes.

7           The first one occurred when I was down in Los  
8 Angeles on a train ride to do some business at the federal  
9 buildings down there. And I walked into the train station  
10 to catch the train home. Because I wasn't feeling good  
11 enough to drive that horrendous drive and fight all that  
12 traffic. And in that train station, after I checked in, I  
13 was standing around enjoying visiting with people. What  
14 came out of my mouth was (making noises). I knew what I  
15 wanted to say, but it was unintelligible. I've never had  
16 that experience before. And for 15 minutes, I couldn't  
17 make any words come out that were intelligible. And so I  
18 sat down and calmed down and relaxed and with the grace of  
19 the good powers, speech came back. I believe that was in  
20 about January or February of '05.

21           In May of '05, it happened again. One of my  
22 neighbors stopped by and come into my little old mobile  
23 home there that I use for staying dry and keeping the  
24 telephone in, and he stepped in the door and he started to  
25 talk to me and I again answered him (making noise). He

1 laughed and I laughed. I could do that, but the speech  
2 was unintelligible. And that took approximately ten  
3 minutes before that went away.

4           So we went down to an Orange County doctor,  
5 specialist, in regards to brain damage, and then did all  
6 kinds of tests and spent all kinds of money and he said  
7 you're doing all right now. Try to get your blood  
8 pressure under control and don't push. Go easy. So we  
9 followed that advice and things seem to be going pretty  
10 good in the summertime. These folks come along, which  
11 adds to stress and turmoil, and I have been monitoring my  
12 blood pressure here because it's extremely elevated,  
13 thanks to these proceedings. And on October 27th, I had a  
14 heart attack. And it's a short synopsis of it. Taken to  
15 emergency hospital, emergency room, and emergency people  
16 got things going again. And the outcome of that, by  
17 approximately 1 o'clock, I was on the operating table and  
18 they done an angioplasty and an angiogram and two  
19 angioplasties, which involve putting stints in to open up  
20 some arteries to hopefully get the blood flowing again.  
21 And we've been under doctor's care since then. We did not  
22 have to do open heart surgery. We have been watching our  
23 activity, our blood pressure, which is still elevated.

24           In fact, for the record, before the hearing, at  
25 1:28, my blood pressure was 165/85, pulse rate of 78; at

1 1:42 it was 176/76, and a pulse rate of 89; at 2:06 it was  
2 185/84, pulse rate of 69.

3 My normal is between 126 and 129, with the bottom  
4 numbers being 74 to 80 and the pulse rate being 55 to 60.  
5 So this is stressful.

6 Now, the bottom line to this is, why haven't we  
7 been making reports? Why haven't we been processing  
8 material? I acquired the services of a large, large  
9 mechanical tractor called a D9, build by Caterpillar.  
10 It's their third -- The biggest one is a D11, I think, the  
11 D11, D10, and a D9, and they go all the way down to a D2.  
12 This piece of equipment weighs 100,000 pounds and when it  
13 walks over concrete it makes gravel. And that's what I  
14 have been doing most recently.

15 Prior to that, we have used other size of various  
16 pieces of equipment to process the material, to separate  
17 asphalt into the asphalt, concrete into concrete, sand and  
18 gravels into sand and gravels, and dirt into dirt.

19 The airport comes along in February of '04 with a  
20 letter which you have a copy of there, stating that they  
21 want the 13 acres for airport expansion. The Master Plan  
22 shows it highlighted in yellow, right in the middle of the  
23 words. They also indicated, verbally, to me that they  
24 wanted all of my concrete, asphalt, and dirt, for fill and  
25 subbase, at the airport.

1           My wife and I learned to fly at that airport.  
2   1970 -- or 1967, '68, I learned to fly and she learned to  
3   fly later. I spent 12 years in the Airport Land Use  
4   Commission fort, protecting that airport and recommending  
5   compatible land uses for neighbors who wanted to use their  
6   property. So I have been there. I've been where you  
7   folks are.

8           Done a lot of public hearings, and I've always  
9   asked for whoever was coming up in front to present their  
10   problems, please suggest some solutions. You know, we're  
11   not there to beat you up. We're there to try and protect  
12   airports because they have been closed, by thousands,  
13   across the country because of the lack of intelligent  
14   planning and allowing incompatible use developed next  
15   door. I even was president of the local pilots  
16   association for three years.

17           Anyway, we have been a supporter of aviation. I  
18   am still a supporter of aviation. I would like to see the  
19   Master Plan completed. I would like to cooperate any way  
20   we can, to get it done.

21           The health situation to get out there and process  
22   in 45 days and do this and do that within 18 months -- I  
23   don't know. I will try. Been trying. We've got some  
24   done. I disagree with your staff reports. I don't think  
25   they know what's going on. They got their -- what's the



1 word I'm looking for --

2 MR. RAMEY: Agenda.

3 MR. FILBIN: Well, I wouldn't say "agenda." Their  
4 relation or reality as to what is going on. I don't know  
5 if they've ever made little material out of big material  
6 or not. We never got that far.

7 But we've made material and Mr. Ramey has pictures  
8 that we took for showing the various types of materials we  
9 made, various types of materials we have sold, to bringing  
10 in a bunch of receipts. I don't have them. I don't have  
11 them.

12 I don't think of myself as a facility or as  
13 nothing. I think of myself as a retirement program,  
14 because when I got the property based, there came a  
15 situation where there was an opportunity to stockpile some  
16 concrete and asphalt and then start making smaller stuff  
17 out of it because people need it in San Luis Obispo.  
18 Don't have any to make a base out of, to fix roads, to fix  
19 foundations for buildings.

20 And so far, the supply has built up a little  
21 bigger than the out-go. It is time and past time to get  
22 what maybe I relate to your staff as saying processing,  
23 and I envision what they're talking about is a gigantic  
24 piece of machinery to crush this big material that comes  
25 in, to make little material. It's got elevators,

1 separators, screens, a great big pile coming off the end  
2 of an elevator. That's one way of doing it.

3 There's over a million dollars in putting that  
4 equipment together, plus another million dollars involved  
5 in having the loaders and the excavators and the  
6 bulldozers feed it. I don't have that kind of money.

7 And for the years that I have been there, I've had  
8 no static that I'm causing any problem to the public  
9 health, safety, or to the environment.

10 The Fed EPA has been out. The State EPA has been  
11 out. The local health department has been out. I have  
12 never been stopped. I've never been told, you're a bad  
13 boy, get out of here, leave our area. Nothing.

14 In fact, we've even offered material to some of  
15 the local governments. The county had potholes out in  
16 front of my mailbox, and I offered to give them a place to  
17 deposit their asphalt they dug up. I offered to give them  
18 a place to get rid of the excavated dirt underneath the  
19 roadway because that old roadway was put on top of dirt.  
20 Then I offered to give them how much subbase they wanted  
21 to fix that. If they wanted to be 18 inches or 24 inches  
22 deep, do it, free. I wanted to fix the road. I want to  
23 help my neighbors and protect them.

24 They wouldn't do it. They hauled it off. They  
25 hauled off the dirt. They brought in sub base. I asked

1 several times, why won't you do this?

2 It's Filbin. I'm not the most popular citizen in  
3 the county, I'm sorry to say. But that's the way it is.

4 And here comes the airport, January the 18th, the  
5 real estate relocation consultant for the county made an  
6 appointment and came by. And his letter is included in  
7 your package, from David Richmond, to talk about what  
8 would it take to relocate you, Mr. Filbin? And we had a  
9 very nice visit. A very fine gentleman. He said I will  
10 be back to see you within two or three weeks, probably  
11 with a written proposal. That was January 18th. Haven't  
12 heard from him yet.

13 In the meantime, we get a letter from the county's  
14 attorney that my fence is on the wrong property, and I'm a  
15 bad boy. Well, the fence I knew was put on the wrong  
16 property. It's a steel fence post, two wires to keep the  
17 horse in. And let him eat the weeds on our property line,  
18 the county and me. And it's temporary. And the county  
19 wants to acquire my property, the fence won't be there.

20 So you know, I've been there since 1978 doing  
21 these things. And I feel I'm being harassed. I feel I'm  
22 being coerced. I feel I'm being set upon. And with the  
23 county asking you folks to come down and harass me when  
24 they want to buy the property and use the material for the  
25 airport expansion, it's just something. There's a word

1 for it. I don't know what it is right now.

2 So I think we've got a situation that can be  
3 rectified with intelligent people working together and not  
4 being browbeat.

5 I think we're got a situation that, properly done,  
6 unless somebody doesn't like it, will make my health  
7 cooperate. Maybe they want to get rid of me. I don't  
8 know. And this stress doesn't help.

9 The situation of grandfathering, the judge in San  
10 Luis Obispo County said, Filbin, you're grandfathered. I  
11 knew I was grandfathered. And I'm grandfathered with you  
12 folks. I was there long before you and I was doing these  
13 things long before you. And your friend Jeff comes out  
14 with rules and regulations that were passed and updated in  
15 July of 2003. That's a long ways past December of '78.

16 And I don't believe we've had proper due process  
17 in working with you folks, and I don't think we've had the  
18 proper time and ability to have a honest, fair discourse  
19 with you. I haven't responded to a bunch of that stuff.  
20 It's addressed to Jim Filbin Aggregates. It doesn't  
21 exist.

22 For fun and games, my neighbors call it Santa Fe  
23 Road Aggregates. There's no business license. There's no  
24 permits. There's nothing. There's a mailbox out front  
25 that says "4397," period. There's no sign on the

1 property. I don't run a quote unquote, what I would call,  
2 a business. I don't do it. You might call it a hobby  
3 activity. I call it my enterprise for hopefully  
4 retirement, because when I get that pile off of there, and  
5 that's what's intended, is to possibly ask, formally, for  
6 permission to create a permanent recycle facility on  
7 probably about 2 acres instead of 13. And utilize the  
8 other acreage for industrial purposes, buildings, mini  
9 storage, whatever is necessary to help the community.  
10 Because we don't have much supply there. And so that's  
11 what I'm trying to achieve.

12 The situation that has developed, quite frankly,  
13 is absurd. And I don't have the health to go out and spar  
14 and argue. I would love to take these folks out in the  
15 street and let us go at it. But it don't work.

16 I brought in that material for my own uses, and my  
17 neighbors have wanted some of it, and my contractor  
18 friends. We're not open to the public. It's private. I  
19 don't advertise, and I don't think you got any  
20 jurisdiction over that, especially since I have been there  
21 for as long as I've been there and doing what I have been  
22 doing. And the county and everybody else hasn't said no.

23 And in your papers you shut -- You have made the  
24 statement that you're concerned of protecting the public  
25 health, the public safety, and/or the environment.

1 Well, so am I.

2 I spent eight years as a volunteer fireman. And I  
3 would be the first to help any of you that's got a  
4 problem. So I don't feel that this inquisition is at all  
5 just, fair, or lawful.

6 MR. RAMEY: All right. Let me show -- You covered  
7 a lot of ground there. But for the record I would like to  
8 go over these photographs so I could show you the type of  
9 material that's on the property and to show you that it is  
10 processed.

11 Exhibit 4 is a pile of material. I would like to  
12 have you identify it.

13 MR. FILBIN: This is a pile of subbase that we  
14 were able to isolate and stockpile. And I do believe that  
15 pile now has been removed by somebody who needed it.

16 MR. RAMEY: Okay.

17 SENIOR STAFF COUNSEL BLEDSOE: Madam Chair, just a  
18 point of order, please.

19 CHAIRPERSON BROWN: Yes. Go ahead.

20 SENIOR STAFF COUNSEL BLEDSOE: Thank you.

21 I think we're slightly confused as to which  
22 photograph you're referring to, so I'm happy if you just  
23 want to refer to them all, collectively, as Exhibit 4.

24 MR. RAMEY: Thank you.

25 SENIOR STAFF COUNSEL BLEDSOE: But it's important

1 that we all know which photograph Mr. Filbin is looking at  
2 when he describes what it is. So if you could just  
3 concoct some way of doing that, please.

4 STAFF COUNSEL LEVINE: This is Steven Levine --

5 CHAIRPERSON BROWN: Yeah. I'm a little confused  
6 and how we're going to go through this process of  
7 identifying the photos and where they are on the property  
8 and what they actually are, without them being marked.

9 STAFF COUNSEL LEVINE: Yes. Steven Levine, legal  
10 counsel for the panel.

11 One suggestion is, as Mr. Bledsoe indicated,  
12 collectively, introduce them as Exhibit 4. And then maybe  
13 your pen, as you do one at a time, say, "This is picture 1  
14 of Exhibit 4, picture 2 of Exhibit 4." And then the  
15 transcript will reflect the testimony for each picture.

16 You could then present the picture to Mr. Bledsoe  
17 and his staff and then up to the Board so they can review  
18 it, as you present your testimony.

19 MR. RAMEY: Thank you. I would like to mark ten  
20 photographs as Exhibit 4.

21 Why don't I call them A, B, C then?

22 CHAIRPERSON BROWN: Yes, please do that.

23 MR. RAMEY: All right. So let's show them 4-A.  
24 That was the pile of subbase. 4-A.

25 So this is the pile that has been segregated; is

1     that correct?

2             MR. FILBIN:   That's right.

3             MR. RAMEY:   Was this pile ground up by the  
4     bulldozer?

5             MR. FILBIN:   Yes.

6             MR. RAMEY:   Let's take a look at -- Is this pile,  
7     4-A, in a format or in a form which would make it salable?

8             MR. FILBIN:   Yes, absolutely.   I'm pretty sure  
9     it's already gone.

10            MR. RAMEY:   When did you take the paragraph?

11            MR. FILBIN:   I believe it's marked on the back,  
12     aren't they, last month?

13            MR. RAMEY:   Within the last month.   It's dated  
14     2/20/06 on the back.

15            MR. FILBIN:   2/20?

16            MR. RAMEY:   2/20.   February of this year.

17            MR. FILBIN:   I took them right over and had them  
18     processed.

19            MR. RAMEY:   All right.

20            Let me show him 4-B, which is a pile of very black  
21     material.

22            MR. FILBIN:   That's a pile of asphalt grindings,  
23     pulverized, large pieces of asphalt into small pieces.  
24     It's suitable for putting back down on streets, driveways.

25            MR. RAMEY:   So it would be salable in that form?



1 MR. FILBIN: It's in high demand, in that form.

2 PANEL MEMBER PEACE: It was all pulverized by your  
3 bulldozer?

4 MR. FILBIN: Not all, no. Some of it was.

5 PANEL MEMBER PEACE: How was it pulverized?

6 MR. FILBIN: It was ground up on the street. It  
7 came from a contractor and he brought it in, and part of  
8 it was already in that condition. Others of it needed to  
9 be more processed and put into that condition.

10 PANEL MEMBER PEACE: The only process you do is  
11 with your bulldozer?

12 MR. FILBIN: You only process what is needed. You  
13 know, if it's in a usable condition, you leave it alone.

14 SENIOR STAFF COUNSEL BLEDSOE: Madam Chair, just a  
15 point of clarification regarding photo B.

16 So is that material -- was it in that condition  
17 when it arrived at your site, the material in the photo?

18 MR. FILBIN: Partially.

19 SENIOR STAFF COUNSEL BLEDSOE: Well, roughly how  
20 much of the pile was in that condition?

21 MR. FILBIN: I don't know. Half of it.

22 SENIOR STAFF COUNSEL BLEDSOE: Is that a guess?  
23 Or is that what you think it was?

24 MR. FILBIN: I didn't measure.

25 STAFF COUNSEL LEVINE: If the counsel can present

1 any request for clarification to the Board, we would  
2 appreciate that.

3 MR. RAMEY: All right.

4 This, 4-B, it is segregated. Is it not?

5 MR. FILBIN: It is segregated. It's sitting in a  
6 separate pile, part of it is gone.

7 MR. RAMEY: Would you called that organized?

8 MR. FILBIN: Well, yes. Absolutely.

9 MR. RAMEY: Would you call 4-A organized?

10 MR. FILBIN: Yes, it's not commingled.

11 MR. RAMEY: It's not commingled with other types  
12 of material?

13 MR. FILBIN: That's right.

14 MR. RAMEY: Here's another photograph. Here's  
15 another material that looks like rock.

16 Could you identify that? 4-C.

17 MR. FILBIN: Yes. These are several different  
18 piles of gravel, separated gravel.

19 STAFF COUNSEL LEVINE: Excuse me.

20 Before you proceed with the testimony of each  
21 picture, if you could synchronize the pictures with  
22 opposing counsel, please.

23 MR. RAMEY: This photograph appears to be a series  
24 of smallish piles.

25 STAFF COUNSEL LEVINE: Probably be easiest to show

1 it to them.

2 CHAIRPERSON BROWN: Mr. Ramey, can you show them  
3 the picture?

4 MR. RAMEY: Got it.

5 CHAIRPERSON BROWN: Thank you.

6 MR. RAMEY: 4-C. And again, is this your  
7 interpretation of organized?

8 MR. FILBIN: Yes.

9 MR. RAMEY: And is it segregated?

10 MR. FILBIN: Segregated. Organized.

11 MR. RAMEY: And that's the form it would be in,  
12 upon sale?

13 MR. FILBIN: Upon sale. Some of it's gone.

14 CHAIRPERSON BROWN: Can I ask you a question.  
15 Is this, in your estimation, material that's ready  
16 for sale? It's already been processed?

17 MR. FILBIN: Yes.

18 CHAIRPERSON BROWN: And what would kind of that  
19 material be used for? Well, you've given us a picture  
20 that has several piles of different materials, and I can't  
21 tell from the photo whether they are segregated or not.  
22 And I can't tell from the photos, it looks like some -- it  
23 looks like it's been processed and some hasn't. And it's  
24 in varying sizes. I just don't know what application that  
25 kind of material would be used for.

1 MR. FILBIN: Well, some of it's used for subbase.

2 Some of it's used for decorative yard cover.

3 CHAIRPERSON BROWN: Okay.

4 MR. FILBIN: Some of it's used for -- I had a  
5 gentleman come out the other day, got a bunch of gravel  
6 for his wife's fish tank, of all things. That's running  
7 the gamut.

8 PANEL MEMBER MULÉ: Mr. Filbin, in looking at this  
9 photograph, noticing on one of the piles, it looks like  
10 there's some weeds or some type of green material growing  
11 out of it. So it looks like it's been sitting there.

12 MR. FILBIN: Mother Nature has done a wonderful  
13 thing in the last 30 days.

14 PANEL MEMBER MULÉ: Again, I guess to clarify the  
15 hearing chair's question, and so what would that  
16 particular pile have been used for? What would that be  
17 used for?

18 MR. FILBIN: The middle pile?

19 PANEL MEMBER MULÉ: With the weeds growing out of  
20 it?

21 MR. FILBIN: The weeds get knocked out, naturally,  
22 and the material would be used for whatever you want to  
23 use it for. Some people needed coarser material. You've  
24 heard of French drains?

25 PANEL MEMBER MULÉ: Yes, sir.

1           MR. FILBIN: Okay. This is the type of material  
2   you would back fill a French drain with.

3           PANEL MEMBER MULÉ: Could you tell us how long  
4   that material has been sitting there?

5           MR. FILBIN: Not exactly. That pile has been  
6   added to and removed from over the last six months.

7           PANEL MEMBER MULÉ: Okay. Thank you.

8           MR. RAMEY: All right. Would you call these  
9   piles, in 4-C, gravel?

10          MR. FILBIN: Yes.

11          MR. RAMEY: Okay. Here's another pile -- actually  
12   it looks like three piles, and call it 4-D.

13          Show that to Mr. Bledsoe.

14          MR. FILBIN: I did.

15          MR. RAMEY: Could you describe what those piles  
16   are?

17          MR. FILBIN: Okay. The front dark ones is more  
18   processed asphalt and separated and then shaped to be  
19   delivered. My neighbors indicated, he wants it as soon as  
20   the weather straightens up. The material to the right is  
21   some coarse, darker gravel material. The top material  
22   behind it is some concrete truck washout. Sandy,  
23   light-colored sand and gravel that hasn't been pushed up  
24   into a stockpile, nor has it been separated out from the  
25   big glumps that are in it. There's a few lumps in it that

1 solidified in the process of bringing the concrete  
2 washout. They are lumps of sand and gravel out of a  
3 cement truck that clumped together, and the tractor breaks  
4 them up, very readily. They do not stay that way.

5 MR. RAMEY: Well, would you say these piles are  
6 organized or segregated?

7 MR. FILBIN: They are segregated, initially.  
8 There's more to be done.

9 MR. RAMEY: And are they -- These piles are  
10 processed, then?

11 MR. FILBIN: Yes, they have been processed.

12 MR. RAMEY: Next is a photograph of -- looks like  
13 three piles of whitish sand material.

14 Can you show that to Mr. Bledsoe?

15 MR. FILBIN: Yep, he's got it.

16 MR. RAMEY: Could you describe what those piles  
17 are?

18 MR. FILBIN: Those are three piles of sand. One  
19 of contractors had overestimated the amount of material he  
20 needed on a job. And he says, can you help me? I've got  
21 three truckloads of sand that I have to dispose of. And I  
22 said, you are an angel. Bring them over here, bring them  
23 right over here, because I got people that are dying for  
24 sand, including myself.

25 We don't have any in San Luis. We don't have any.

1 You got to go down to the beach and swipe it, and you  
2 can't do that. It's frowned upon.

3 MR. RAMEY: All right. Are they organized?

4 MR. FILBIN: They are organized.

5 MR. RAMEY: It looks like it's one type of sand or  
6 one -- it looks like the type of sand came from the same  
7 source. Would you agree with that?

8 MR. FILBIN: I would agree with that, yes.

9 MR. RAMEY: And segregated, then; is that right?

10 MR. FILBIN: And it was never used on a  
11 construction site. He ordered too much.

12 MR. RAMEY: Okay. Here's another pile. Could you  
13 show this -- 4-F, 4-F. Looks like it might be a form of  
14 gravel.

15 MR. FILBIN: This is a load of gravel that, again,  
16 was brought in from a gentleman who had too much brand new  
17 fresh gravel. I said put it right over there and I'll  
18 know where it's at.

19 MR. RAMEY: Is it organized?

20 MR. FILBIN: It's organized, and it's also been  
21 loaded out some.

22 MR. RAMEY: Some of that's gone now?

23 MR. FILBIN: Some of that's gone.

24 CHAIRPERSON BROWN: Mr. Filbin, did this material  
25 and sand come in preprocessed? So all you have done is

1 taken the material and not participated in processing of  
2 this?

3 MR. FILBIN: That material, I didn't need to  
4 process it. All I did was handle it.

5 MR. RAMEY: Well, you did cause it to be  
6 segregated; is that right?

7 MR. FILBIN: I caused it to be placed in a  
8 segregated area.

9 MR. RAMEY: You did not commingle it with other  
10 materials?

11 MR. FILBIN: Didn't commingle it; didn't run over  
12 it with a bulldozer. Didn't need to.

13 MR. RAMEY: And is it in a form that would be  
14 considered salable?

15 MR. FILBIN: Yes.

16 MR. RAMEY: Okay. Let's see. I got another  
17 picture -- let's call this one 4-G. It's a large pile of  
18 concrete rubble.

19 Show that to Mr. Bledsoe.

20 MR. FILBIN: Yes.

21 MR. RAMEY: Is that concrete rubble?

22 MR. FILBIN: That's concrete rubble that has been  
23 initially processed to make riprap. Depending on the size  
24 the people need is depending on the size that you load  
25 out. This is to prevent stream erosion, bank erosion,



1 waterway channel, gouging.

2 CHAIRPERSON BROWN: Mr. Filbin, can you tell me  
3 approximately how high this pile is? It's hard to tell  
4 from the angle of the photo. I don't know how large a  
5 pile this would be.

6 MR. FILBIN: From my memory, I would say it's  
7 approximately 8 foot, 8 to 10 feet.

8 CHAIRPERSON BROWN: And --

9 MR. FILBIN: I've got several piles of this type  
10 of material in the immediate area.

11 CHAIRPERSON BROWN: Okay. My question is, Is a D9  
12 tractor a considerable sized piece of equipment?

13 MR. FILBIN: Yes. We have a picture of it.

14 CHAIRPERSON BROWN: Is it safe to process on a  
15 10-foot mound in that kind of tractor? Can you process  
16 this size of a mound with that size of a piece of  
17 equipment, safely?

18 MR. FILBIN: Yes. And how you would do it is you  
19 would bulldoze off layers of it and run over it. And  
20 passing over that side of the material with the tractor  
21 three times and you've got gravel of an inch and a half  
22 smaller and smaller.

23 CHAIRPERSON BROWN: So you are saying you would  
24 spread the material before you went up a 10-foot pile.

25 MR. FILBIN: Yeah. You would do it safely.

1           CHAIRPERSON BROWN:   Okay.

2           MR. FILBIN:   It would crawl up right there and  
3   have a good time on top of it.   But that wouldn't be good  
4   on the equipment.   It would be hard on the equipment.   So  
5   you take a more gentle approach to it.   You cut into it  
6   and spread it out maybe a foot deep and walk over it and  
7   spread some more on top of it and you only have a make 1  
8   or 2 or 3 passes.

9           CHAIRPERSON BROWN:   Okay.   It's just a little hard  
10   for us to see this pile from the photo that you've given  
11   us, so I just had those questions.   Because I really can't  
12   imagine how high it is or how you would process that size  
13   of a pile from the photo that you have shown us.

14           I don't think it's a very good exhibit, but I will  
15   take your word for it.

16           SENIOR STAFF COUNSEL BLEDSOE:   Madam Chair, if I  
17   might ask the chair to inquire roughly how long Mr. Filbin  
18   thinks that pile has been there.

19           CHAIRPERSON BROWN:   Mr. Filbin, can you good  
20   enough us an approximation of the amount of time that pile  
21   has been there.

22           And I would like to do a follow-up question: How  
23   long it would take to process -- if somebody were to be  
24   able to process it in a timely manner -- how long it takes  
25   to process a pile?   So that's two questions.

1           MR. FILBIN: Well, that pile has been added to  
2     periodically, of that type of material, and some of it has  
3     been there more than six months. And some of it has been  
4     there as little as three months, from my memory of  
5     material that was placed in that area.

6           And the time to process it, with the one piece of  
7     equipment which you will see in these photos that we have  
8     there, right now, it would take less than a half a day to  
9     make all that into small gravel. But the reason that  
10    stopped there, in that condition, is some people want big  
11    chunks of that size, and so you got some big. And you  
12    got -- Once you get it little, you're not going to make it  
13    big. When it comes in big, you can make it little. And  
14    some people want big.

15          I've had numerous people come out and get slabs of  
16    concrete like broken up sidewalk to lay back down in a  
17    patio sidewalk area, various things. I've had two  
18    contractors come and get broken concrete of similar sizes  
19    that they can lift manually and build retaining walls out  
20    of it. So you don't walk through and process everything,  
21    all the time, because some people want other things.

22          CHAIRPERSON BROWN: Okay. Thank you.

23          MR. RAMEY: Why don't we identify the bulldozer  
24    here. 4-H.

25          Show that to Mr. Bledsoe.

1 MR. FILBIN: There you go.

2 SENIOR STAFF COUNSEL BLEDSOE: Thank you.

3 MR. RAMEY: Is that your D9.

4 MR. FILBIN: That is a tractor that is classified  
5 as a D9. It weighs 100,000 pounds.

6 MR. RAMEY: Okay. Here's another picture of it.

7 PANEL MEMBER PEACE: Can you tell me how much how  
8 much a piece of equipment like this costs?

9 MR. FILBIN: I don't know.

10 PANEL MEMBER PEACE: How much did you pay for it?

11 MR. FILBIN: That one cost more than \$50,000.

12 PANEL MEMBER PEACE: You don't charge people to  
13 put stuff on your property. You don't charge people to  
14 take it off. You said this is a hobby, so this is like a  
15 really expensive hobby.

16 MR. FILBIN: Some people make donations. Some  
17 people make donations. I don't run a strict shop. And  
18 it's what the market wants to do.

19 I had a church come out the other day and bring me  
20 a bunch of stuff and I didn't charge the church. Should  
21 I?

22 MR. RAMEY: Here's another picture of your  
23 bulldozer, 4-I.

24 MR. FILBIN: Here's the tractor up on top of a  
25 concrete rubble pile that has -- you can see big pieces.

1            SENIOR STAFF COUNSEL BLEDSOE: We do not have a  
2      copy of that photo.

3            MR. FILBIN: Do you got an extra one of that?

4            STAFF COUNSEL LEVINE: You can just submit that  
5      particular one, when you're done, to the Board, for our  
6      exhibits.

7            MR. RAMEY: I don't seem to have an extra copy of  
8      that one.

9            MR. FILBIN: And that one demonstrates,  
10     graphically, the large pieces of concrete sitting close to  
11     the tractor. And if you look at under the tractor and  
12     beyond it, you see small pieces of concrete. That tractor  
13     did it. It walks over the big stuff and makes little  
14     stuff.

15           And the first time my neighbor, Burke Construction  
16     brought over their tractor to demonstrate what it would  
17     do, I was just amazed. The ground shook 20 feet away from  
18     it when it was walking by.

19           It was newer one, and it costs, Boardperson Peace,  
20     more over \$800,000. The new ones are extremely expensive.  
21     And I don't know what a new one costs. It's out of my  
22     realm.

23           MR. RAMEY: Okay. I got another photograph, 4-J.  
24     Showing what?

25           MR. FILBIN: This is a pile of topsoil that is

1 being processed and put in shape, hopefully for the  
2 airport runway extension, or other people who have come in  
3 and need topsoil.

4 We had a contractor the other day come in and load  
5 four different trucks with material that he needed to have  
6 to raise up a low spot before he could move in a new  
7 mobile home.

8 CHAIRPERSON BROWN: I'm sorry. Can you tell me --  
9 Did you say this is topsoil?

10 MR. FILBIN: Yes, ma'am. Yes, ma'am.

11 What we will do with that, before classifying it  
12 as garden topsoil, we will put it through a screening  
13 process to take out odds and ends and little lumps. But  
14 the subgrade that he needed underneath the mobile home,  
15 this was perfect --

16 CHAIRPERSON BROWN: And do you do the screening on  
17 your facility or at your -- On your property you do the  
18 screening? You said before you use it for gardening  
19 topsoil you would put it through a screening process. Do  
20 you do that?

21 MR. FILBIN: I haven't done it yet.

22 CHAIRPERSON BROWN: Okay. And again, can you  
23 clarify for us the size of this pile and approximately how  
24 long you think it's been there.

25 MR. FILBIN: That one's big. Just guessing at it,

1 I would say it's 20 to 25 feet tall and that one's been  
2 growing for a while. It started out --

3 PANEL MEMBER MULÉ: Excuse me, Mr. Filbin. Do you  
4 have any idea how long it's been sitting there?

5 MR. FILBIN: How long it's been here? It's been  
6 growing for more than a year.

7 PANEL MEMBER MULÉ: More than a year?

8 MR. FILBIN: Year.

9 PANEL MEMBER MULÉ: Thank you.

10 MR. FILBIN: When the airport said they needed  
11 dirt, I said I got dirt for you.

12 MR. RAMEY: Well, in any event, it's topsoil;  
13 right?

14 MR. FILBIN: Yes, it's topsoil.

15 MR. RAMEY: It's not concrete; it's not asphalt.

16 MR. FILBIN: It's just like the material that I  
17 brought in and used on the property.

18 MR. RAMEY: And it's in a form that's salable;  
19 correct?

20 MR. FILBIN: It's in a form that's salable,  
21 segregated.

22 MR. RAMEY: Organized.

23 MR. FILBIN: Organized.

24 PANEL MEMBER MULÉ: Mr. Filbin, I'm looking at  
25 this photograph. And I want -- Looks like at the bottom

1 here, near the bottom left corner, could you describe --  
2 that doesn't appear to be topsoil to me.

3 MR. FILBIN: Looks like a few rocks in it; doesn't  
4 it?

5 PANEL MEMBER MULÉ: Well, it looks like some  
6 concrete in there.

7 MR. FILBIN: Yeah. Rocks. There's some odd and  
8 end pieces that gets mixed. You got to move them out of  
9 there.

10 PANEL MEMBER MULÉ: Okay. Thank you.

11 MR. FILBIN: You bet.

12 That's what's done to the thumb. Didn't move it  
13 at the right time.

14 MR. RAMEY: All right. Here's the land use  
15 ordinance. This was San Luis.

16 Could I have those marked as 4-K.

17 Could you identify them?

18 MR. FILBIN: Yes, this was the land use ordinance  
19 that was in effect when I bought the property, in my  
20 parcel, Lake Manufacturing Design Review Airport Hazard  
21 Classification.

22 MR. RAMEY: Why don't you show those to  
23 Mr. Bledsoe?

24 SENIOR STAFF COUNSEL BLEDSOE: Thank you.

25 STAFF COUNSEL LEVINE: Excuse me. Before you move



1 on, are you introducing that as an exhibit to these  
2 hearings?

3 MR. RAMEY: Yes, ma'am.

4 STAFF COUNSEL LEVINE: Would you like to introduce  
5 them to the Board?

6 MR. RAMEY: Okay.

7 CHAIRPERSON BROWN: Actually, Mr. Ramey, if you  
8 could draw your portion to a conclusion, we are at time  
9 and we would like to take a brief recess at your  
10 conclusion so that we can --

11 MR. RAMEY: Yes. I'm ready to conclude with the  
12 offering of a declaration for Mr. Filbin and the one --  
13 This one is signed, so I would like to offer this as 4-L.

14 And I will conclude our presentation.

15 CHAIRPERSON BROWN: Thank you. Do we have  
16 additional questions from the hearing panel for the  
17 petitioner at this time?

18 PANEL MEMBER MULÉ: Just one here.

19 On this, this is a -- You said this is the land  
20 use ordinance.

21 MR. FILBIN: Yes.

22 PANEL MEMBER MULÉ: That was in effect in 1978,  
23 when you brought the property?

24 MR. FILBIN: Yes.

25 PANEL MEMBER MULÉ: Has this land use ordinance

1    been amended since then?

2           MR. FILBIN:   Yes, ma'am.

3           MR. RAMEY:    Yes.

4           PANEL MEMBER MULÉ:  Do you have a copy of the  
5   current land use ordinance with you today?

6           MR. FILBIN:   No.

7           PANEL MEMBER MULÉ:  You do not.  Thank you.

8           MR. RAMEY:    No, I do not.

9           PANEL MEMBER MULÉ:  Thank you.

10          CHAIRPERSON BROWN:  Any other questions from the  
11   hearing panel members?

12          I would like to take a five-minute break and then  
13   we will move to the presentation of the rebuttal by staff.

14          We will reconvene here at 3:15.

15          (Thereupon a break was taken in  
16   proceedings.)

17          CHAIRPERSON BROWN:  Thank you.  We will reconvene  
18   the hearing panel and call the roll, please.

19          SECRETARY KUMPULAINIEN:  Member Mulé?

20          PANEL MEMBER MULÉ:  Here.

21          SECRETARY KUMPULAINIEN:  Member Peace?

22          PANEL MEMBER PEACE:  Here.

23          SECRETARY KUMPULAINIEN:  Chair brown?

24          CHAIRPERSON BROWN:  Here.

25          STAFF COUNSEL LEVINE:  Steve Levine, legal counsel

1 for the Panel. Just a point of procedure to facilitate  
2 these proceedings and to the extent the parties want to  
3 focus the remainder on this issue, obviously, as I  
4 mentioned at the begin of this proceeding, this is an  
5 appeal of the Notice and Order by the operator as  
6 petitioner, challenging the validity of the order. And so  
7 the issue before this panel and what it will take from the  
8 testimony in evidence given today is whether this  
9 particular site and the petitioner falls under the  
10 authority of the regulations.

11 If so, whether there has been sufficient showing  
12 by the enforcement agency that, in fact, the material that  
13 they are alleging is an issue, has been stored for more  
14 than six months without processing, just triggering the  
15 need as a disposal site for an order, and that's basically  
16 the issues.

17 To the extent that those findings are made by this  
18 board, it would be the enforcement agency's burden at a  
19 subsequent hearing, if they so choose, to return and then  
20 penalties for violating and then the questions of fact  
21 with respect to the order would be -- The violation of the  
22 order would be addressed at that time. So I just wanted  
23 to -- We don't need to go to that second level today, but  
24 I felt it was relevant on the issue before us.

25 CHAIRPERSON BROWN: Mr. Bledsoe, please proceed.

1            SENIOR STAFF COUNSEL BLEDSOE: Thank you, Madam  
2 chair.

3            I would like to introduce Respondent's Exhibit A,  
4 which is simply a copy of the series of slides that Mr.  
5 Hackett will present.

6            And for the record, the materials that have been  
7 submitted with Respondent's pleading in this matter are  
8 considered the evidence that we have submitted, so that's  
9 part of the record before you.

10           So I would like to introduce at this point the  
11 three staff members of the enforcement agency most  
12 directly involved in this matter.

13           Jeff Filbin -- pardon me. There's a Freudian  
14 slip.

15           Jeff Hackett -- excuse me, please -- Susan Markie,  
16 and Howard Levenson.

17           Jeff.

18           MR. HACKETT: For the record, my name is Jeff  
19 Hackett. I work in the Board's enforcement assistance  
20 section within the permitting and enforcement division.  
21 I've been with the Board for about 14 years.

22           My responsibilities include the permitting and  
23 inspection program for San Luis Obispo County.

24           My presentation is going to provide you with the  
25 information evidence which supports the issuance of Notice

1 and Order EA-2005-05, including background information on  
2 the site, inspections of the site, contents of the Notice  
3 and Order, and my observations of activities at the site  
4 since issuance of the Notice and Order.

5 (Thereupon an overhead presentation was  
6 presented as follows.)

7 MR. HACKETT: Site is located at 4398 Santa Fe  
8 Road in San Luis Obispo County. APN 076-371-012.

9 And the site is owned by Mr. and Ms. Filbin. The  
10 site consists of approximately 13 acres and is zoned  
11 agriculture.

12 --o0o--

13 MR. HACKETT: This gives you an idea of the  
14 proximity of the site to the airport. It's on the -- just  
15 on the west side of the extent of the runway, in San Luis  
16 Obispo County.

17 --o0o--

18 MR. HACKETT: I first went to the site in  
19 September of 2004. I tried to meet with the property  
20 owner to discuss the board's construction, demolition, and  
21 inert debris regulations. We referred to them as CDI  
22 regulations, contained in Title 14 of the California Code  
23 of Regulations.

24 I briefly discussed the regulations for the  
25 receipt, handling, transfer, and processing of type A

1 inert debris with the augment on the property.

2 He would not provide his name at the time, but was  
3 later confirmed to be Mr. Filbin. I asked if I could  
4 inspect the site to see if the facility's handling and  
5 storage activity would be subject to the CDI regulations  
6 in the first place.

7 My request to inspect the site was not granted.

8 I provided a copy of the regulations to the  
9 occupant prior to leaving the site.

10 --o0o--

11 MR. HACKETT: Since permission to inspect the site  
12 was not granted, we sent a letter to Mr. Filbin on  
13 September 29, asking that he contact us by October 15,  
14 2004, to arrange for inspection.

15 Since we didn't receive a response from Mr.  
16 Filbin, I decided to conduct an aerial assessment with the  
17 California Highway Patrol to evaluate the types and extent  
18 of solid waste on the property.

19 --o0o--

20 MR. HACKETT: This is an aerial photo that was  
21 taken at that time. The red outline is obviously  
22 13 acres.

23 Basically seven different stockpiles. The soil  
24 pile, we are not so concerned about. It's more or less  
25 the concrete pile and the asphalt pile and the concrete

1 washout area that was referred to earlier by Mr. Filbin.

2 --o0o--

3 MR. HACKETT: On two occasions, Mr. Bledsoe had  
4 sent correspondence to Mr. Filbin, on November 29, 2004,  
5 and January 27, 2005, requesting consent to inspect the  
6 property.

7 Consent was not granted.

8 As a result, we had to pursue an inspection  
9 warrant. We obtained that inspection warrant from the San  
10 Luis Obispo County Superior Court on May 23rd, 2005.

11 --o0o--

12 MR. HACKETT: On May 25th, 2005, Sue Markie and I  
13 served the inspection warrant to Mr. Filbin and proceeded  
14 to conduct an inspection of the property for compliance  
15 with Title 14, CCR, CDI Regulations.

16 At the time of the inspection Mr. Filbin stated  
17 that there were no records of materials received or  
18 removed, and such records are not maintained.

19 The concrete and asphalt and soil have been  
20 received at the site since December 1978. Type A inert  
21 debris is not processed and removed on any regular  
22 frequency.

23 At the time of our inspection, we measured  
24 approximately seven stockpiles of materials, with over  
25 57,000 cubic yards of concrete; 23,000 cubic yards of

1 asphalt, and over 7,000 cubic yards of soil.

2 --o0o--

3 MR. HACKETT: Our focus today is materials  
4 received within the jurisdiction of the Waste Board are  
5 primarily the concrete and asphalt, which are considered  
6 type A inert debris. Type A inert debris that we observed  
7 was source separated, contained less than 10 percent  
8 residual, and less than 1 percent putrescible.

9 There is no evidence that the type A inert debris  
10 was being processed for resale and reuse. We didn't  
11 observe any processing equipment on site and no stockpiles  
12 of processed material available for resale or reuse.

13 --o0o--

14 MR. HACKETT: Again, that definition of  
15 processing, I just want to reiterate with Michael, that  
16 the inert debris must be processed and sorted for resale  
17 or reuse. It must be made into a product for resale or  
18 reuse. We did not observe that.

19 --o0o--

20 MR. HACKETT: Here's a series of pictures that we  
21 took during the May 25th inspection. Kind of looking  
22 south on the property. We're on top of the soil stockpile  
23 in the south.

24 --o0o--

25 MR. HACKETT: Another view. This on top of the



1 concrete and asphalt pile towards the center of the  
2 property.

3 --o0o--

4 MR. HACKETT: Part of the concrete pile. There's  
5 some transit pipe on the lower right.

6 --o0o--

7 MR. HACKETT: This is what we refer to as the  
8 washout area. This is what Mr. Filbin had described as  
9 far as the sand and gravel area where the cement trucks  
10 basically come and unload in this area. It's burned up by  
11 concrete and soil.

12 --o0o--

13 MR. HACKETT: This will give you a little  
14 perspective by the size of the piles, by the truck driving  
15 through. This is an asphalt pile here. We're looking to  
16 the north.

17 --o0o--

18 MR. HACKETT: That was just inside the washout  
19 area. You can see the material from the cement trucks.

20 PANEL MEMBER PEACE: I just have a question on the  
21 washout area.

22 Does it need any sort of permit from the Water  
23 Board?

24 MR. HACKETT: That question was posed. Again, as  
25 far as an MPDES permit from the regional board indicated

1 no, so I checked with the regional water board and did not  
2 have a permit to allow for the discharge of this material.

3 PANEL MEMBER PEACE: But should we have one?

4 MR. HACKETT: Yes.

5 MR. RAMEY: Objection. Objection. That's not --  
6 that's speculation.

7 SENIOR STAFF COUNSEL BLEDSOE: Madam Chair --

8 MR. RAMEY: Calls for a legal conclusion;  
9 objection.

10 SENIOR STAFF COUNSEL BLEDSOE: Mr. Hackett is  
11 simply relating a conversation he had with an employee of  
12 the Regional Water Board.

13 CHAIRPERSON BROWN: Thank you.

14 MR. RAMEY: Yeah. I know. And we don't know who  
15 that was or whether they are qualified to answer the  
16 question. Objection. Hearsay. Legal conclusion.

17 CHAIRPERSON BROWN: This is informal.

18 We will take your objection under submission and  
19 we will proceed with the hearing.

20 MR. RAMEY: Thank you.

21 --o0o--

22 MR. HACKETT: This is another picture of the  
23 washout area.

24 --o0o--

25 MR. HACKETT: The size of this concrete pile is

1 about 20 to 25 feet high. Large slabs of concrete in  
2 there.

3 --o0o--

4 MR. HACKETT: Part of the asphalt pile.

5 PANEL MEMBER PEACE: On those piles there are the  
6 piles that are 25 feet high, how long did it take you to  
7 accumulate that?

8 MR. FILBIN: How long?

9 PANEL MEMBER PEACE: How long did it take you to  
10 accumulate the big pile? Do you accumulate that in a  
11 month? In six months? In six years?

12 MR. FILBIN: It's been going over a period of  
13 time. And I would really have to think about that to  
14 figure out how long it took it to grow that high.  
15 Sometimes it grows 3 or 4 feet in a week, and can go 6 to  
16 8 feet in a week. But I don't know how long it's been,  
17 how long it's taken. It's been there awhile.

18 CHAIRPERSON BROWN: Mr. Filbin, when you're  
19 answering the question, if you could lean to the  
20 microphone. I just want to make sure that the court  
21 reporter has the opportunity to hear your entire response.

22 MR. FILBIN: Of course.

23 Just trying to get my blood pressure under  
24 control.

25 CHAIRPERSON BROWN: That's okay.

1                               --o0o--

2               MR. HACKETT:   So based on our on observations and  
3   discussions with Mr. Filbin, the type A inert debris is  
4   not being processed and sorted for resale or reuse within  
5   the six months of receipt, and was considered a violation  
6   of 14 CCR, Section 17381.1(e)(1) for storage time limits.

7               We mailed a copy of the Site Inspection Report and  
8   Notice of Violation to Mr. Filbin on June 24, 2005, and  
9   requested the following:

10              We asked him to submit a compliance schedule by  
11   July 29, 2005, which included a date the owner/operator  
12   would begin the process for resale or reuse the existing  
13   stockpiles of type A inert debris;

14              Then to maintain records.

15              Again, the responsibility is on the owner and  
16   operator to provide proof that the storage time limits are  
17   not exceeded, the six months.

18              Type A inert debris that's not processed for  
19   resale or reuse within the six months of receipt is deemed  
20   to have been unlawfully disposed and subject to  
21   enforcement action.

22                               --o0o--

23              MR. HACKETT:   On August 23 and September 28, I  
24   observed the site from Santa Fe Road and noted that large  
25   stockpiles of asphalt and concrete had not been reduced in

1 size.

2 Since Board staff had not received any phone  
3 calls, correspondence, or other communication from Mr.  
4 Filbin, since the transmittal of that inspection report,  
5 we subsequently issued a Notice and Order EA-2005-05, for  
6 violations of the storage time limits and Public Resource  
7 Code Section 44002, Operating Without a Permit.

8 --o0o--

9 MR. HACKETT: Even though Howard went over the  
10 Notice and Order, I feel it's appropriate to go over the  
11 requirements of it again.

12 First was to immediately cease and desist from  
13 accepting type A inert debris; begin processing existing  
14 stockpiles of type A inert debris by November 15th, and  
15 complete processing by February 15th, 2006; and then  
16 submit monthly status reports to the Waste Board on the  
17 type and quantity of inert debris processing, each month.

18 --o0o--

19 PANEL MEMBER PEACE: Can I ask you another  
20 question?

21 So all the violations that we're talking about  
22 here today are for noncompliance with our C&D regulations?

23 MR. HACKETT: Correct.

24 PANEL MEMBER PEACE: There isn't anything in here  
25 for the buckets of oil that's not contained properly and

1 the batteries that aren't disposed of properly and all the  
2 other kinds of garbage he has on his property. There  
3 isn't anything for that? This is just for the processing  
4 of the piles?

5 MR. HACKETT: Yes.

6 PANEL MEMBER PEACE: Can you tell me, why are  
7 we --

8 MR. HACKETT: Our reports were referred to the  
9 other -- the local environmental health department for the  
10 CUPA program, CUPA and the hazardous waste storage and  
11 handling.

12 We did focus on this concrete and asphalt. That's  
13 primarily within our jurisdiction.

14 MR. RAMEY: I would like to point out that the  
15 property has been searched by the federal Environmental  
16 Protection Agency and County including the batteries and  
17 the oil, and no citations have been issued to him.

18 CHAIRPERSON BROWN: We understand that.

19 PANEL MEMBER PEACE: Recently?

20 MR. RAMEY: No. 10 years ago.

21 CHAIRPERSON BROWN: Mr. Hackett, would you like to  
22 finish your presentation.

23 MR. HACKETT: Yes.

24 --o0o--

25 MR. HACKETT: On December 12, 13, 14, I observed

1 the site during different times of the day from an  
2 adjacent parking spot.

3 So we just conducted some surveillance to see if  
4 that was violation for Notice and Order EA-2005-05. And  
5 several dump trucks, cement trucks, and pickup trucks with  
6 trailers were observed emptying and unloading at the site  
7 and entering with type A inert debris.

8 No processing was observed.

9 --o0o--

10 MR. HACKETT: This is a dump truck emptying off.

11 --o0o--

12 MR. HACKETT: Over near the washout area. The  
13 cement truck unloading.

14 --o0o--

15 MR. HACKETT: And then a dump truck up on the  
16 top -- sorry, the picture is a little blurry -- unloading  
17 the asphalt.

18 --o0o--

19 MR. HACKETT: Conducted additional surveillance on  
20 December 20 and 21st.

21 --o0o--

22 MR. HACKETT: And here are some of our  
23 observations. On the asphalt, unloading concrete, the  
24 soil out in the washout area.

25 --o0o--

1 MR. HACKETT: Here's another one.

2 --o0o--

3 MR. HACKETT: Howard has already discussed the  
4 January 5th agreement, at the beginning.

5 With that agreement, Mr. Filbin did allow us to go  
6 onto the property and inspect the site for conformance  
7 with the January 5th agreement as well as the Notice and  
8 Order. So we had taken that opportunity, and we asked for  
9 records of the type A inert debris received and removed,  
10 and no records were available at the time.

11 --o0o--

12 MR. HACKETT: Type A inert debris continued to be  
13 received at the site. We saw somebody unloading while we  
14 were there. There was no evidence that type A inert  
15 debris was being processed for resale or reuse.

16 Stockpiles of type A inert debris continued to  
17 grow.

18 It was our conclusion that Mr. Filbin failed to  
19 comply with the provisions of the Notice and Order for the  
20 January 5th, 2006, agreement. A copy of the Site  
21 Inspection Report was forwarded to Mr. Filbin on  
22 February 17th.

23 --o0o--

24 MR. HACKETT: These are a few of our pictures from  
25 the January 25th, 2006, inspection.



1 --o0o--

2 --o0o--

3 MR. HACKETT: Now I am clicking through these kind  
4 of quick.

5 --o0o--

6 MR. HACKETT: This is that washout area again.

7 --o0o--

8 MR. HACKETT: They were unloading while we were  
9 there.

10 --o0o--

11 MR. HACKETT: As was previously mentioned as well,  
12 the preliminary injunction was granted by the San Luis  
13 Obispo County Superior Court on March 15th, which enjoined  
14 Mr. Filbin from engaging in or performing directly or  
15 indirectly the acceptance of Type A inert debris.

16 --o0o--

17 MR. HACKETT: And in conclusion, Mr. Filbin has  
18 not provided Waste Board staff with the compliance  
19 schedule or records providing proof that the activities at  
20 the site are not subject to the requirements of Title 14,  
21 California Code of Regulations, Article 5.9, as previously  
22 requested. And any notification or permit application has  
23 not been received either.

24 Time A inert debris storage and handling  
25 activities conducted on the site do not meet the

1 requirements of Title 14, Section 17381.1, and the site  
2 does not qualify as a recycling center since the storage  
3 time limits are not being met.

4 Surveillance of the site has provided the evidence  
5 that Mr. Filbin continues to accept Type A inert debris,  
6 in violation of Notice and Order No. EA-2005-05.

7 The type A inert debris is considered to be  
8 unlawfully disposed and subject to enforcement action.

9 Notice and Order No. EA-2005-05 was issued and is  
10 warranted to ensure that Type A inert debris is received,  
11 handled, stored, transferred, processed, and/or disposed  
12 in accordance with applicable requirements.

13 That concludes my presentation.

14 CHAIRPERSON BROWN: Thank you, Mr. Hackett.

15 Are there any questions by members of the hearing  
16 panel? Ms. Peace, do you have any questions for staff?

17 SENIOR STAFF COUNSEL BLEDSOE: Madam Chair, staff  
18 has a little bit more we would like to present in addition  
19 to Mr. Hackett.

20 CHAIRPERSON BROWN: Okay. Continue.

21 SENIOR STAFF COUNSEL BLEDSOE: Thank you.

22 Mr. Hackett, just to clarify, the piles of type A  
23 inert debris that you saw at the facility, if one were to  
24 assume those had been processed materials, in your  
25 expertise, would you say that those piles has been in

1 place more than 18 months?

2 MR. HACKETT: Yes.

3 SENIOR STAFF COUNSEL BLEDSOE: Thank you.

4 MR. RAMEY: I'm going to object that. That lacks  
5 foundation. I move to strike it.

6 CHAIRPERSON BROWN: Mr. Ramey, it's an opinion, I  
7 believe, by a witness.

8 We'll take your objection under submission.

9 SENIOR STAFF COUNSEL BLEDSOE: And Madam Chair, I  
10 would like to call on Howard Levenson to address the  
11 question of some sort of alleged arrangement or collusion  
12 or conspiracy between the County of San Luis Obispo and  
13 the enforcement agency.

14 CHAIRPERSON BROWN: Thank you.

15 Mr. Levenson.

16 DEPUTY DIRECTOR LEVENSON: Thank you, Madam Chair.  
17 Howard Levenson.

18 I would like to address that allegation that there  
19 is some relationship between our actions at the site and  
20 the actions of the County, in pursuing the properties  
21 under the eminent domain provisions.

22 I do want to clarify that we are not acting as  
23 enforcement agency for the County. Rather, the County has  
24 not designated a local enforcement agency, nor has one  
25 been certified by the Board. So in lieu of local

1 enforcement agency, the Board has taken over the  
2 enforcement agency functions, as a State body.

3 For the record, that process where we took over as  
4 enforcement agency concluded in July of 2004, with a  
5 memorandum -- excuse me, June of 2004, with a Memorandum  
6 of Understanding that was signed between the Board and the  
7 County of San Luis Obispo.

8 Our initial discussions with the County began in  
9 late 2002, and in 2003 -- and my memory serves roughly  
10 February or so, give or take a month -- we received an  
11 application from the Integrated Waste Management Authority  
12 to become the locally designated local enforcement agency  
13 for the County.

14 CHAIRPERSON BROWN: Can you just -- I'm sorry to  
15 interrupt you.

16 DEPUTY DIRECTOR LEVENSON: Sure.

17 CHAIRPERSON BROWN: Can you, so that there is a  
18 clear understanding, when you say "enforcement agent," can  
19 you just specify for what kinds of activities  
20 specifically.

21 I know you probably have an idea, but just so  
22 we're all clear, specifically for what types of activities  
23 and what activities do we not have jurisdiction over?

24 DEPUTY DIRECTOR LEVENSON: This would be the local  
25 enforcement agency, typically housed in the county

1 environmental health department, designated by the local  
2 governing body, and then certified by the Board, to  
3 perform various activities related to solid waste  
4 management handling. This would include permitting and  
5 inspection; operations and facilities; determinations of  
6 whether a particular activity requires a permit or not;  
7 follow-up inspection actions; enforcement actions, if  
8 warranted; as well as inspections of closed sites or known  
9 abandoned sites. All are pursuant to the Integrated Waste  
10 Management Act and accompanying regulations that have been  
11 adopted by the Board.

12           So we did receive an application from the  
13 Integrated Waste Management Authority to become a local  
14 enforcement agency.

15           At the time, the environmental health department  
16 of the County was serving as the local enforcement agency  
17 and continued to do so.

18           We entered into a period of negotiations with the  
19 Integrated Waste Management Authority for approximately a  
20 year -- it might have been a little bit more than a  
21 year -- to see if they could qualify to become the local  
22 enforcement agent. We had several issues that needed to  
23 be resolved and worked through most of those issues. But  
24 we're unable to resolve one particular issue, which was a  
25 conflict of interest between a party or a program that

1 operates facilities and then also regulates the  
2 facilities.

3 The Integrated Waste Management Authority did  
4 operate several programs and we indicated to them that  
5 they would have to divest themselves of those programs, if  
6 they were to become a local enforcement agency.

7 At that point they withdrew their application in  
8 early 2004. I don't have the exact date with me, but I  
9 can certainly provide that to you. Then we received a  
10 letter from the County, stating their intention to  
11 withdraw their existing designation of the County Health  
12 Department as local enforcement agency.

13 In March of 2004, the board of supervisors of the  
14 County passed that resolution, withdrawing that  
15 designation. And so since there was no locally designated  
16 local enforcement agency, the Board was put in a position  
17 of having to take over as enforcement agency, which we did  
18 when that Memorandum of Understanding was signed.

19 So that's just a brief history. It has nothing to  
20 do with any actions on the part of the County regarding  
21 the airport and possibilities of taking over that  
22 property. It was in response to petitions or an  
23 application that we received from a potential program that  
24 could be the LEA.

25 Thank you. I just wanted to clarify that for the

1 record.

2 CHAIRPERSON BROWN: Thank you. I appreciate that.

3 Any questions from the hearing panel members?

4 Mr. Bledsoe, do you have any other witnesses?

5 SENIOR STAFF COUNSEL BLEDSOE: Yes. Lastly, Madam  
6 Chair, I would like to introduce in the record as  
7 Respondent's Exhibit B, a copy of -- and request the panel  
8 take judicial notice of a declaration that was filed in  
9 superior court action that ultimately resulted in the  
10 preliminary injunction being issued, in favor of the  
11 Integrated Waste Management Board. And I do this in  
12 various ways.

13 Petitioner Filbin has indicated that San Luis  
14 Obispo -- that he's in compliance with San Luis Obispo  
15 County ordinances, and that he's never done anything wrong  
16 as far as the County is concerned.

17 I don't have personal knowledge of whether he has  
18 or has not complied with county ordinances, but a  
19 declaration by the supervisor -- a supervisor in the  
20 enforcement division of the planning and building  
21 department of San Luis Obispo County was submitted in the  
22 injunction action. And I would like to submit that as  
23 Petitioner's Exhibit B.

24 And I would just briefly like to call your  
25 attention to this. I'm certainly not going to dwell on

1 this, but paragraphs 5, 6, 7, 8, and 9, and 10 discuss  
2 substantial problems the County has had with Mr. Filbin --  
3 apparent convictions for violations of local ordinances,  
4 apparently criminal matters.

5 So in addition to your own evaluation of  
6 Petitioner Filbin's credibility, and based on your own  
7 experiences, I would submit this to you to consider in the  
8 same light.

9 Thank you.

10 And that concludes Respondent's presentation.

11 Thank you.

12 MR. RAMEY: I would like to respond.

13 CHAIRPERSON BROWN: All right. Well, let me first  
14 ask the panel if they have any questions before we move to  
15 your rebuttal, which is next on the agenda.

16 Are there any questions?

17 No?

18 All right.

19 Mr. Ramey, your rebuttal?

20 MR. RAMEY: I think in my opening statement, I  
21 think I indicated that Mr. Filbin had never been  
22 restrained or fined or found to be in violation of any  
23 relevant -- of any relevant activity.

24 In 1992 -- Remember, we're talking about someone  
25 who's been there for 28 years.



1           According to Mr. Trinidad, he was convicted of  
2   the misdemeanor violation of illegal grading and was  
3   placed on probation.

4           Illegal grading is not involved in this action.

5           On Page 3 he indicates that he was convicted of  
6   infractions involving some unspecified land use  
7   violations. An infraction is not a crime. It's not a  
8   criminal offense.

9           And I really object to that because you couldn't  
10   use an infraction as establishing a proposition that any  
11   violation occurred. There's no right to a jury trial on  
12   an infraction, and that's why. And I don't know what he's  
13   talking about. I don't know what land use violations he's  
14   talking about.

15           So really, one criminal conviction in 28 years for  
16   unlawful grading, which is not relevant. I don't see how  
17   this impeaches his credibility in any way.

18           Is this my rebuttal time here?

19           CHAIRPERSON BROWN: Yes, actually it is.

20           This is your rebuttal time.

21           MR. RAMEY: As far as I'm concerned, this is a  
22   subtle question.

23           I mean, he's not really doing anything wrong  
24   except he's just not processing material fast enough,  
25   let's say.

1           But he is processing the material, if you look at  
2   the definition of processing. There is some kind of  
3   intelligent design going on here. We're not talking about  
4   piles of garbage. I object to that characterization.  
5   There weren't enough batteries on the property to trigger  
6   a violation. It was, like, six or eight of them. There  
7   wasn't enough oil to trigger a violation.

8           Certainly Mr. Filbin has been searched and  
9   examined more thoroughly than probably anyone else in San  
10   Louis County, but like I said, in 28 years, only one  
11   violation for grading, unlawful grading.

12           I think he just needs to speed it up. And that's  
13   something that -- I mean, this whole situation involves  
14   activity which would be entirely proper and legal, you  
15   know, if he had a permit or if he was actually a waste  
16   storage facility and then he could get a permit. So I  
17   think we ought to remember that whatever orders are made,  
18   they should be worded carefully not to preclude him from  
19   using this property in a lawful manner. There should be  
20   no order from this panel that precludes him from operating  
21   his property in a lawful manner.

22           If there is an order that precludes him from doing  
23   something that would otherwise be lawful, that would be an  
24   unconstitutional order and a deprivation of his property  
25   rights, in my opinion.

1           If you wanted to make an order that requires him  
2   to process material within 6 months upon receipt and move  
3   it off within 18 months, and the material is concrete and  
4   asphalt, and the order is effective prospectively, I don't  
5   think we got a problem.

6           Just remember, he has had a health problem, and he  
7   is 69 years old.

8           So I think we should fashion any order that allows  
9   him to operate lawfully and you could incorporate the time  
10  limits within the regulations.

11          Seems to me that processing includes separation,  
12  which he does that. So Mr. Hackett's opinion apparently  
13  does not correspond to the legal definition of processing.  
14  I think Mr. Hackett expects to see some kind of a conveyor  
15  belt operation, and that's not the type of operation that  
16  we've got going on here. But it doesn't have to be.

17          Mechanical sorting, shredding, spreading by  
18  vehicle, seems to me like he's doing that. And so really,  
19  the only question is, how long is it taking him to do it?

20          As long as the panel understands that and  
21  incorporates the time constraints, I don't think it's a  
22  problem. That's all I have to say.

23          CHAIRPERSON BROWN: Thank you, Mr. Ramey.

24          Any questions from the hearing panel?

25          PANEL MEMBER PEACE: You mentioned that this is a

1 one-man -- a one-tractor operation.

2 How long would it take to process all those big  
3 piles on the property?

4 MR. FILBIN: Well, when my health permits and the  
5 weather permits, right now you can't do anything. And  
6 it's been that way for quite some time.

7 It's been my intent to bring in, on a contract  
8 basis, large equipment. You can have custom operators  
9 travel in the state and you we've got two in our immediate  
10 area. And they will come in and do that. And they  
11 indicated, if they were operating full time, they could  
12 completely remove all of that material to a crushed pile.

13 PANEL MEMBER PEACE: Process it or remove it?

14 MR. FILBIN: Pardon?

15 PANEL MEMBER PEACE: Process it or remove it?

16 MR. FILBIN: Well, processing it first. And  
17 normally what happens when you start processing, people  
18 start coming to get it, on a big scale. Within 90 to 120  
19 days. Now, the weather won't permit it right now.

20 The market is a factor that depends on how fast it  
21 can move out. One of the market customers is the San Luis  
22 airport. And from the map and the Master Plan, you can  
23 see, it's just a few hundred feet way. They wouldn't even  
24 have to truck it. They would use big earth moving  
25 equipment, reducing the cost to the airport expansion, and

1 I'm not going to gouge them for the cost of the material.

2 PANEL MEMBER PEACE: Can I ask another question?

3 You're talking about the airport. And you did  
4 give us this thing here from the department of general  
5 services from San Luis Obispo.

6 MR. FILBIN: Pardon. I couldn't hear you.

7 PANEL MEMBER PEACE: You gave us this as an  
8 exhibit. And you were talking about the airport. If I  
9 could ask you a question.

10 It says that the County, back in February 2004,  
11 this is two years ago, asked to come on your property to  
12 do an environmental review to see if it was contaminated,  
13 and then once that assessment was complete, that they  
14 would give your property an appraisal.

15 Did you ever get anything from them on the  
16 appraisal of the property?

17 MR. FILBIN: We've had two real estate appraisals  
18 started.

19 I'm not sure if either one of them have been  
20 finished. They have not communicated back to me.

21 We've had two environmental investigations.

22 One, they wanted to look at the concrete and  
23 asphalt to see if there's any toxic problems. They  
24 inspected the entire area. And I got a couple of oil  
25 drips out of some of the equipment like it does underneath

1 your car, but easy to take care of. And they would then  
2 call back in by the county to look at the dirt, because  
3 they wanted the dirt for the runway fill.

4 PANEL MEMBER PEACE: That's what I was wondering.  
5 In the appraisal, would they account for all this stuff  
6 and would that make your property more valuable because of  
7 all the stuff on it that they wanted?

8 MR. FILBIN: The material that is on it is  
9 considered, to me, and other people, personal property.  
10 But they are buying the --

11 PANEL MEMBER PEACE: They want to buy all the  
12 stuff --

13 MR. FILBIN: And if they want the material, they  
14 negotiate and buy the material.

15 The environmental investigator inspecting the dirt  
16 said it passed just fine and it would be perfect.

17 The relocation negotiator that came out for the  
18 interview on January 18th, said he would be back in two to  
19 three weeks with a written proposal, he still hasn't come  
20 back.

21 PANEL MEMBER PEACE: That was the next question I  
22 was going to ask you, about the relocation.

23 When they talk about the relocation, were they  
24 talking about relocating all of this stuff on the  
25 property? Or are they leaving it there because it was of

1 value to them, when they got the property?

2 MR. FILBIN: It wasn't specified. He was to come  
3 back with written proposal, and the County hasn't come  
4 through with it yet. And that was January 18 of this  
5 year.

6 I called him within the last two months and asked  
7 him, "What did you hear? What's going on." It's been  
8 more than two or three weeks.

9 And he said, well, they've found some kind  
10 easement situation that they are trying to understand what  
11 to do. And I just learned a week ago of what the easement  
12 situation was. It's my driveway coming in off of the  
13 street, taking part of my land and the neighbor's land.  
14 We share a common driveway. We both shared about a  
15 24-foot strip for ingress and egress. It's not recorded.

16 And if they want something recorded, it can be  
17 recorded. If they need to not buy that 12-foot strip  
18 that's involved in the property next door using it, cut it  
19 off the property. I will give it to the guy next door.  
20 You know, it's very simple to solve the problem.

21 PANEL MEMBER PEACE: You said this is something  
22 that's happening fairly --

23 MR. FILBIN: I can't hear you. Pardon me.

24 PANEL MEMBER PEACE: Is it something that you  
25 think the county wants to do fairly soon, acquire your

1 property?

2 MR. FILBIN: They want to start moving dirt, they  
3 told me, in July of this year for the road realignment and  
4 they changed their minds on that. July. Here we are, in  
5 April. May, June, July. And they are supposed to put it  
6 to bid, June this year. And were they going to realign  
7 the road, it's across the northwestern corner of the  
8 property up there, and quite frankly don't remember  
9 whether it was a property relocater that asked me or  
10 somebody else. How long would it take to clear that  
11 corner of the materials that are up there so they could  
12 get in and move dirt? And I said, "You give me two days  
13 with a bulldozer and it's clear. How clear do you want  
14 it. Do you want the subbase left or do you want the  
15 subbase out. If you want the subbase out it would take  
16 another day."

17 So I've received no communication from these  
18 people. I went to talk to them and I received nothing. I  
19 talked to the County's airport project manager and he  
20 says, We've found some other material and it's over north  
21 and it's on the hill, and it's owned partly by the City  
22 and this, that, and the other. And our particular  
23 community does not, shall we say, endorse tearing down  
24 hills.

25 And I said, well, mine is next door, through the



1 fence. And you could move it with large equipment at a  
2 very, very huge cost savings as compared to trucking it  
3 from across the adjacent road. And he agreed with me. He  
4 says he's only been on the project for three years and  
5 doesn't understand the local --

6 PANEL MEMBER PEACE: And if you were to process  
7 this to get it off your property, you know, is there a  
8 market for this?

9 MR. FILBIN: Yes.

10 PANEL MEMBER PEACE: There is a market for this?

11 MR. FILBIN: Yes.

12 PANEL MEMBER PEACE: Other than the airport,  
13 there's a market?

14 MR. FILBIN: I've missed an opportunity to get rid  
15 of this material three times over this year and last year,  
16 because of my health. And I haven't had -- I just haven't  
17 had the ability to coordinate it, organize it, and do it.

18 PANEL MEMBER PEACE: Okay. Thank you.

19 MR. FILBIN: That's the bottom line. Whatever it  
20 takes to make it go and solve the problem, we're willing  
21 to do it as soon as the health can get there.

22 CHAIRPERSON BROWN: And we sympathize with that,  
23 Mr. Filbin.

24 I do have a question for Mr. Ramey.

25 In your rebuttal argument, you talked about the

1 Notice and Order that you think that this panel should  
2 issue.

3 And I'm just curious, in your opinion, how that  
4 differs from the Notice and Order that was processed to  
5 Mr. Filbin originally, which was to process and remove the  
6 materials. And your agreement in January stipulated, you  
7 agreed to begin processing these materials as well as  
8 start documenting. And Mr. Filbin's photo exhibits show,  
9 and by his testimony, that some of this material was  
10 processed. And yet there's no documentation to even show  
11 that any of that was done.

12 So I'm just a little unclear with your rebuttal  
13 that you are now asking us to issue the Notice that was  
14 already issued, that you are rebutting.

15 STAFF COUNSEL LEVINE: Madam Chair.

16 Steve Levine, counsel for the panel.

17 A point of clarification, before Mr. Ramey  
18 responds, so we are on the same page.

19 I had quoted a section of that January 5th letter  
20 from before that talked about the original agreement that  
21 was slightly modified. And so specifically I believe your  
22 question is pertaining to the Order which has essentially  
23 been amended, as reflected in the January 5th agreement,  
24 which would require quote "to begin processing material  
25 within 15 days of the length of the stay" -- stopping that

1 quote, that would be January 5th -- "Complete processing  
2 within 90 days thereafter." And so that would be  
3 basically starting processing by January 20th and then we  
4 would be going 90 days from there.

5 CHAIRPERSON BROWN: Exactly.

6 I guess my question is, if you agreed to this in  
7 January and we still haven't -- I understand Mr. Filbin's  
8 health considerations. And what's different today and  
9 there's no documentation to show that any of what he has  
10 said has been processed is removed.

11 MR. RAMEY: The operative language I agreed to is  
12 that the stay was lifted. There was some additional  
13 verbiage, but it is somebody's opinion as to what -- The  
14 only thing I agreed to was to lift the stay.

15 CHAIRPERSON BROWN: But you signed the letter.  
16 You signed a letter of agreement with all of the  
17 information in it. Wouldn't it be your obligation,  
18 representing to Mr. Filbin, to clarify what we're signing?

19 I mean, I'm stuck here as part of this hearing  
20 panel, understanding how, if we issue an Order or make a  
21 determination on the Notice and Order, there is going to  
22 be anything different than what we have been doing for the  
23 last 90, 120 days, or a year and a half.

24 MR. RAMEY: For one -- For one thing, the time for  
25 commencing would be now. The time for commencing --

1 because we filed the appeal. The appeal stayed the Order.  
2 I agreed to lift the portion of the Order which wasn't  
3 stayed. That's all I agreed to. That means they could  
4 enforce their Order. They could start enforcing their  
5 Order.

6 PANEL MEMBER MULÉ: I would like legal counsel to  
7 respond to that.

8 CHAIRPERSON BROWN: Thank you.

9 STAFF COUNSEL LEVINE: Certainly.  
10 Steven Levine.

11 The stay on processing the material was lifted  
12 effective January 5th. So as I mentioned, when we came  
13 back from the break today, upon the enforcement agency's  
14 determination that the revised schedule, as reflected in  
15 that January 5th agreement, has not been met.

16 It would be the enforcement agency's burden of  
17 proof and opportunity to come before this -- either before  
18 this Board or panel for penalties with respect to  
19 violating the terms of the processing period, which  
20 actually hasn't expired yet. It would expire April 20th.  
21 Or in the alternative, I believe there are other statutory  
22 avenues that the enforcement agency could pursue including  
23 going back to superior court for further injunctive  
24 relief.

25 So, you know, at this juncture, since I believe we

1 are all on the same page -- and the document speaks for  
2 itself -- that, you know, pursuant to the original Notice  
3 and Order and the January 5th subsequent agreement, either  
4 after April 20th or before, if there was some anticipatory  
5 breech, but certainly, after April 20th, if a  
6 determination is made, that processing has not occurred in  
7 accordance with these order and agreements, then the  
8 enforcement agency would return for proper redress, as I  
9 mentioned.

10 CHAIRPERSON BROWN: Okay. Thank you.

11 Ms. Mulé, do you have any questions?

12 This hearing does provide for a public comment  
13 period. If there is anybody that -- nobody's sworn in, so  
14 there will be no public comment period.

15 MR. FILBIN: Can I be a member of the public and  
16 comment?

17 CHAIRPERSON BROWN: We have staff closing  
18 statements at this time.

19 SENIOR STAFF COUNSEL BLEDSOE: Yes, ma'am. Very  
20 briefly.

21 I would like to refer you to -- I believe, just a  
22 moment ago, you were referring essentially to the point  
23 that Petitioner Filbin made an agreement which he is not  
24 complying with.

25 In my declaration, which is attached as Exhibit B

1 to our supplemental hearing brief, I state in there sort  
2 of the recalculation of the dates by when he should have  
3 indicated if he were going to, in fact, comply with that  
4 agreement. That's found on Page 3 of my declaration,  
5 beginning at line 10.

6 Petitioner Filbin agreed to processing the  
7 materials by January 20th, 2006.

8 He agreed to complete the processing by April 5th,  
9 2006.

10 The first monthly status report on the type and  
11 quantity of type A inert debris processed was due to be  
12 received by Jeff Hackett on February 20th, 2006.

13 And provide a monthly report on amounts processed  
14 materials which were removed from the facility, was due on  
15 March 20th, 2006.

16 If you want testimony to that effect, Mr. Hackett,  
17 I expect, will testify that none of those dates have been  
18 satisfied.

19 So if I might just briefly conclude.

20 The evidence before you today has established that  
21 James Filbin has stored unprocessed type A inert debris on  
22 his site for more than six months.

23 If you were to determine that some of the material  
24 has been processed, the evidence has shown that that  
25 processed material has been on site for more than 18

1 months.

2 By definition in state law, under the  
3 Board-adopted CDI regulations, James Filbin's facility is  
4 a type A inert debris disposal facility. A type A inert  
5 debris disposal facility must have a solid waste facility  
6 permit issued by the enforcement agency.

7 Mr. Filbin has no such permit.

8 A person operating a solid waste facility without  
9 a solid waste facilities permit must cease and desist upon  
10 receiving an Order to that effect and such an order has  
11 been issued by the EA and received by Mr. Filbin.

12 No evidence has been supported to indicate that  
13 the EA in issuing its Notice and Order is acting in any  
14 way to intentionally affect the value of the property or  
15 to cooperate in any way with the County of San Luis Obispo  
16 in its future plans to possibly acquire Mr. Filbin's  
17 property.

18 No authority or evidence has been submitted for  
19 the proposition that Mr. Filbin has a vested right to  
20 continue to operate in violation of state law. And again,  
21 in our papers, we have submitted authority, Davidson  
22 versus County of San Diego, that establishes that.

23 Laws and regulations adopted to protect -- prevent  
24 public nuisance and protect the public health and safety  
25 may be applied to activities that commenced prior to the

1 enactment of those laws.

2 Therefore, the hearing panel should uphold the  
3 Notice and Order in every respect and should deny  
4 Petitioner Filbin's appeal in every respect.

5 Thank you very much.

6 MR. FILBIN: Do I get a rebuttal? I wanted to  
7 thank the panel for being here today --

8 CHAIRPERSON BROWN: You have an opportunity for a  
9 closing statement, Mr. Filbin.

10 MR. FILBIN: When are we going to do it?

11 MR. RAMEY: Right now.

12 CHAIRPERSON BROWN: Right now.

13 MR. FILBIN: Oh, right now.

14 I want to thank the panel for their time today and  
15 listen to all this.

16 I apologize for my health. None of us are in any  
17 control of that, I don't believe. The weather is another  
18 situation and we can't do. We have endeavored to process  
19 material. The weather has stopped a number of development  
20 projects in our area, to be able to receive the processed  
21 material. It can't work when it's muddy. There are just  
22 construction sites all over the place have been sitting  
23 idle now for more than 60 days.

24 So you know, you got to have some flexibility and  
25 understanding what's going on in the marketplace and what



1 is humanly possible. And I humanly wasn't able to do  
2 that.

3 I didn't understand this agreement, just flat  
4 didn't understand it. And I still don't understand it.  
5 This stay business and do that and the other. Wiley has  
6 tried to get it through my head two or three times, and it  
7 don't -- it don't register. I don't know what's going on.

8 But I do know, blood pressure got up to 194/92,  
9 just a few minutes ago.

10 And so I would like to do whatever I can to work  
11 this thing out. The County of San Luis Obispo could help  
12 solve the problem a whole bunch. If they would leave me  
13 alone I would just be tickled pink and I would solve the  
14 problem. There is a marketplace for the material. I need  
15 to use some of it on my own site. We're not creating an  
16 eyesore.

17 I still don't know from these esteemed gentleman  
18 what public health, safety, or environmental concern there  
19 is. This has been some nomenclature that's been put  
20 before you and in the writings. It's got no substance  
21 behind it.

22 If there's a health problem, a safety problem,  
23 tell me. I will fix it -- quick. A battery and some oil.  
24 The oil is in the process of being reclaimed to do a  
25 particular lubricating job I have with some of these

1 tractors. They contain 50 gallons of oil in their  
2 transmissions. Reused, what they call waste oil or  
3 whatever you wanted to call it. Oil drainings out of  
4 other oil engines can be refiltered and reused in that  
5 position. And the price of petroleum today, instead of  
6 throwing it away, I'm setting up to reprocess it, to use  
7 in my own facilities. But it hasn't happened yet.

8 The batteries -- The price of lead is going up.  
9 Time to gather them up and sell them.

10 MR. RAMEY: I don't think the oil is before the  
11 panel. The batteries aren't up before the panel, nor is  
12 the oil. I think we all agree on that. And neither is  
13 the dirt.

14 I just read over the letter, I signed, again. I'm  
15 sorry, but I didn't agree to all of those things.

16 All I agreed to was the lift the stay. The stay  
17 that was being lifted was on an Order that required him to  
18 do certain things. I agreed to lift the stay. He didn't  
19 tell me in his letter what the order said. I know what the  
20 order said.

21 All I did was agree to lift that stay that had  
22 been placed by my filing of the appeal. It turns out that  
23 the preliminary injunction that currently exists wasn't  
24 stayed to begin with.

25 So I mean, I hope we agree on the procedural -- I

1 have to disagree that I agreed that he was going to do  
2 anything beyond give the panel the authority -- give the  
3 attorney the authority to enforce his Order.

4 Anyway, if it's all a matter of timing, he needed  
5 the time -- He needed the time to recover and comply. So  
6 I will submit it.

7 CHAIRPERSON BROWN: Okay. Thank you, Mr. Ramey.

8 The Board will now conclude the public portion of  
9 the hearing and we will go into a closed session for  
10 deliberation and a decision, which will thereafter be  
11 issued in writing and served upon all parties via fax and  
12 U.S. mail.

13 Unless any panel members have any questions?

14 Given the time of day, I don't anticipate that we  
15 will have a written decision available to either party  
16 until probably midday tomorrow.

17 So you can anticipate a decision in writing to  
18 both the petitioner and staff by approximately noon  
19 tomorrow.

20 MR. RAMEY: You have my fax number; right.

21 I did receive the ruling from yesterday.

22 CHAIRPERSON BROWN: Okay. So we will adjourn.

23 MR. RAMEY: Thank you.

24 MR. FILBIN: Thank you all.

25 (Thereupon the Hearing of Appeal by Mr.

1 James P. Filbin of Notice and Order No.  
2 EA-2005-05 issued by the California  
3 Integrated Waste Management Board as  
4 Enforcement Agency for San Luis Obispo  
5 County adjourned at 4:15 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, KATHRYN S. KENYON, a Certified Shorthand Reporter  
3 of the State of California, do hereby certify:

4 That I am a disinterested person herein; that the  
5 foregoing Hearing of Appeal by Mr. James P. Filbin of  
6 Notice and Order No. EA-2005-05 issued by the California  
7 Integrated Waste Management Board as Enforcement Agency  
8 for San Luis Obispo County was reported in shorthand by  
9 me, Kathryn S. Kenyon, a Certified Shorthand Reporter of  
10 the State of California, and thereafter transcribed into  
11 typewriting.

12 I further certify that I am not of counsel or  
13 attorney for any of the parties to said workshop nor in  
14 any way interested in the outcome of said workshop.

15 IN WITNESS WHEREOF, I have hereunto set my hand this  
16 16th day of April, 2006.

17

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23 KATHRYN S. KENYON, CSR

24 Certified Shorthand Reporter

25 License No. 13061